

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### Virginia Housing Commission

#### Short-Term Rental Workgroup

July 14, 2016, 1:30 PM

House Room 3, The Capitol

*Delegate Chris Peace*, Chair, called the meeting to order at 1:30 P.M.

**Members in attendance:** ; Senator George L. Barker;; Delegate David L. Bulova;; Delegate Barry D. Knight; Delegate Christopher K. Peace; Mark K. Flynn, *Governor Appointee*; Delegate Christopher Peace, *Chair*; Edward Mullen, *Airbnb Corporation*; David Skiles, *Travel Technology Association*; Erica Gordon, *Hilton Worldwide*; Eric Terry, *Virginia Restaurant & Travel Association*; Amy Hager, *The Bed & Breakfast Association of Virginia*; Sterling Rives, *Virginia Association of Counties*; Ron Rordam, *Mayor of Blacksburg, Virginia Municipal League*; Mark Haskins, *Virginia Department of Taxation*; Chip Dicks, *Virginia Association of Realtors*; Robert Bradshaw, *Independent Insurance Agents of Virginia*; Maggie Ragon, *Commissioner of the Revenue, City of Staunton*; Brian Gordon, *Northern Virginia Apartment Building Association*

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### I. Welcome and Call to Order

#### II. Introductions

- **Delegate Christopher K. Peace, Chair:**
  - First on our agenda is the primer on Airbnb Mechanics, Jillian Irvin, Public Policy Director for Airbnb. This was a special request from members of our workgroup who thought it would be good to know how it works before we continue on in the conversation that we've embarked on on how to facilitate these types of transactions in the Commonwealth in a uniform manner.
  - Jillian, welcome to the workgroup. I know that you have slides you'd like to present. Copies are also in our packet and they'll be posted online for anyone who would like to see them after the meeting.

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE BETSY CARR  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR GEORGE L. BARKER  
SENATOR WILLIAM M. STANLEY, JR.

MARK K. FLYNN  
LAURA D. LAFAYETTE  
T.K. SOMANATH

### III. Primer on Airbnb Mechanics

- **Jillian Irvin, Public Policy Director, Airbnb:** Hello, everyone, my name is Jillian Irvin. I'm the Public Policy Director for Airbnb. I'm based here on the East Coast, although the company itself is based in San Francisco. It started in about 2008 based on the idea of sharing people's homes. So if you don't know anything about it, I'm going to go through kind of a brief primer of how the process works, so you can follow along in the packets you have or on the screens if you can see that.
  - Basically, Airbnb is a place in which you can rent out either an apartment for a night, a castle in the South of France for a week, or this crazy looking villa for a month. There are a variety of different types of accommodations on the platform itself.
  - The point of Airbnb is to connect hosts and guests with a unique travel experience. So these are people that are looking for something kind of outside of the traditional hotel experience.
  - We've grown since 2008 to really create a global community. We operate in pretty much every country in the world other than Iran and North Korea. We are part of this growing, sharing economy. I know a lot of the organizations and company up here you've probably heard of. If you haven't heard of them already, you will be hearing about them soon.
  - The point of the sharing economy is really to allow people to use underutilized parts that they already have, whether it's their car with Uber or it's an extra furniture piece that they have and they're going to sell it on eBay. With regards to Airbnb, it's an extra room that they have in their house or a vacation rental that they might have. They're able to make money off of that and it's outside of something that's more of a traditional business.
  - Our community here in Virginia I will read for you. In 2015, we had 3,500 hosts in the Commonwealth. The average age of host is 44 years old. The number of nights that a person incoming to the state would stay was about 3.9. There were 122,000 guests that were welcomed into the Commonwealth. The average age of that person was about 35. And as you can see, we had quite a few more people as outbound tourists using Airbnb on the platform outside of Virginia than we had coming in. We had 232,000 outbound residents that are using this platform elsewhere.
  - Basically how it works is that you can check in. You get a user name on the platform, and we do a verification of your identification to make sure that you actually are who you say you are. And when someone opens their home to you, you're actually the person that you claim to be.
  - You can go and search, which I'll show you later, to see exactly which type of accommodation you want. It can be a room, it can be a shared room, or it can be

an entire home listing. You send a request to the host at the time you would like to have the calendar dates for the room. The host then decides independently of Airbnb whether or not they want to take this person as a guest. So it's completely up to them. It can be that their calendar was booked up, and they made a mistake on those days, and they don't want the person to come to their home if it's not available for those days.

- At the time that the host actually accepts the booking, we collect the money from the guest. We will hold that money until the first 24 hours of the accommodation is actually being used. So after the first 24 hours, that's when we'll send the money to the host to collect. At the end of the entire stay, much like an eBay transaction, but the host and the guest rate each other. So there is a common sense of everyone acting on their best behavior because they know that at some point they're going to get rated on this, and they won't be able to use Airbnb again if they have a bad rating. So there's an incentive for everyone to kind of behave themselves.
- If you log into Airbnb.com, this is the front page that you get. Here is where you type in where you want to go. Then you put the dates in, the number of guest, etc., you hit Search. And depending on what you're looking for and what device you're looking for, you'll get the accommodations that are available on those days.
- The platform itself will operate on a laptop, on your iPad, and/or on your cell phone. This is just kind of a sample of one of the very nice listings that we have in Paris that would come up if you searched for Paris on a particular day. Here's another one that we have in San Francisco.
- The booking itself is a two-sided model. This is broken down for just the ease of the numbers. Let's say that a host decides to put up their room for \$100 a night. If it's a \$100 a night, what we would collect at the time of is \$109 from the guest. There is a 9 percent guest fee that we would take from the guest at that time. Then the host at the time of the first 24 hours of the guest being in the host home, they would then get the \$100 from their booking, minus \$3 that we charge as a 3 percent host fee. So we take 12 percent—9 from the guest and 3 from the host. The host will walk away with \$97, and the guest would be out \$109.
- This is broken down in the booking page that would be the last page you get to when you're using Airbnb. This is in euros. I apologize. I didn't have one for dollars. There's a cleaning fee that's up to the host that's added onto it. There's a service fee that we charge. And on areas that we are collecting and remitting taxes, we will then have a line item for the occupancy taxes as well. That's broken down before you request a book.
- The payment page, again, breaks down all of the service fees and the cleaning fees that you get. This is where you go through the payment. At this point, after clicking Accept, the money would actually be transmitted to Airbnb, and would

hold it. After the reservation is done and you've gone home, you'd get this receipt that once again breaks down everything. Gives you more information on where the listing was, etcetera, number of nights, and where you stayed. The host gets something very similar to this so they're able to keep track of all of the information.

- Lastly, this piece I wanted to talk about is our trust and safety. We are working throughout the 2008 and beyond years that we've been in operation to make sure that it's a very safe platform. One of the ways that we do this is by identifying that the host and guest are who they say they are. It's never anonymous. You're letting a potential stranger into your home, but you know that that person has had a background check, and there are some safety requirements, and that there is an out. If something does go wrong, the Airbnb is constantly there.
  - Landlords can ask for an actual third-party criminal background check on someone that's coming into their home or into their apartment building. Through the platform itself, we'll be able to provide that for them.
  - All hosts and guests have to agree to our Community Standards and Good Neighbor Policy, which basically just goes through . . . don't be a jerk. Don't go and trash someone's house, etc. In the off chance that that does happen, we have a 24-hour, 7-days-a-week support line. We have one in Portland, Oregon. We've got one in Dublin. We have one in Singapore. So you're able to get someone at any hour of the day. You're able to call in and complain and have them deal in real time with whatever the issue is.
  - In the case that something terrible happens, we do have a million dollar insurance policy on every trip that covers both the host and the guest. So if the guest property were to be damaged, we could cover that. If the host property were to be damaged, we could cover that as well.
  - As I mentioned earlier, we also have an online review system after the booking has happened so that both the host can see what the guest has been rated, and the guest can see what hosts have been rated before. So before you're going and staying in someone's home, you've seen the comments that people have left from previous stays.
  - So that is my kind of brief overview of Airbnb. Chairman Peace, I'm assuming there might be some questions for me. If I can answer them, I'll be glad to.
- **Peace:** Okay. Does any member of the workgroup have a question for Jillian? Yes. Delegate Bulova.
  - **Delegate David Bulova:** Thank you, Mr. Chairman, and thank you for that presentation. I have two questions that hopefully you'll be able to answer. One is on the background check aspect, because you mentioned that twice talking about verifying who an individual is. And I think you talked even more about potential

criminal background checks. I guess what I'm wondering is does that include things like sex offender registries so that you don't have somebody who would normally be prohibited from living in a particular home because of its proximity to a school or other public place.

- **Irvin:** Yes. That's something that would be flagged. If you were a guest, you wouldn't be able to become a guest on the platform. If you were a host, you wouldn't be able to host either.
- **Bulova:** Okay, thank you, that helps. Second question. You had mentioned the 24/7 complaint hotline, which is great. I guess my question is, is that accessible to neighbors? And how would a neighbor know that they could avail themselves of that complaint hotline if there was an issue?
  - **Irvin:** That is a great question. We just launched a neighbor complaint hotline. I don't have the number in front of me, but I can definitely get it to you. It's something we put on our website and are encouraging our hosts to tell their neighbors about. But it's something that we need to get more people to be aware of. There is also a 24-hour neighbor complaint hotline.
- **Bulova:** Thank you.
- **Peace:** Further questions or comments from member of the workgroup? Mr. Terry.
- **Eric Terry, Virginia Restaurant and Travel Association:** Thank you, Mr. Chairman. Jillian, you said in the answer to that question that you were able to kind of restrict individuals who have a criminal background or whatnot. How do you handle jurisdictions, like Richmond, for example, where Airbnb has been illegal for a period of time? How do you restrict those or do you restrict those at all?
  - **Irvin:** As of right now, we're trying to work with the different communities that our hosts are operating in. It's incumbent upon our hosts to be in compliance with the law, but we are willing to work with and try to figure out the bad actors and take them off the platform.
- **Terry:** Thank you very much.
- **Peace:** Delegate Knight.
- **Delegate Barry Knight:** I received a letter here a month or so ago from the mayor of the City of Virginia Beach. He said that they had someone who went through Airbnb. I don't recall. I know it was a shooting; I don't know if it was a murder involved. I believe it was a murder. When the police came, the person that owned the house I believe was from China or somewhere like that, and they didn't know how to contact the homeowner. They didn't know that it was Airbnb. They just didn't know what to do. So in a situation where Airbnb facilitates the renting of somebody's house and there's something like a murder at the house, how does the local police force know

who to contact, who's the owner or whatever, short of going to the courthouse and looking at the records at 3 a.m.?

- **Irvin:** I think it would be similar to the same situation of someone that was just renting. I don't know exactly the difference between Airbnb in that situation and any kind of other rental. But I may not understand your question entirely. Is it just getting a hold of a homeowner or actually dealing with the shooting itself?
- **Knight:** Well it was probably both. I represent the Sandbridge area. Typically, they have a real estate company, and when the police go there, they know that they have to contact Sandbridge Realty. Here, they didn't know who to contact or how to get in touch with the owner or anything. If Airbnb is going to facilitate this, how do local authorities know that you are the go-between?
- **Irvin:** I think that's exactly why we need legislation. There needs to be a process through which we're able to identify the host. And in a situation right now, there isn't any legislation, so there's no way in which the company is communicating with the government. We're trying to figure out a solution for exactly that.
- **Peace:** Further questions or comments, Delegate Knight? No. In our first meeting, Mr. Rives had asked us to consider public safety issues, and that's something we are definitely going to be looking at and working through this workgroup process. If I recall, the Charlottesville City attorney was asked whether Airbnb locations are any more or less safe than any other location. Her answer was no, and that's in the record. Mr. Rives.
- **Sterling Rives, Virginia Association of Counties:** Thank you. I have a related question regarding public safety. If I were to decide to rent a home through Airbnb as opposed to staying in a Hilton, for example, what type of assurance would I have that that home had functional smoke detectors or carbon monoxide detectors? How would I know if the wiring was safe or if the house were structurally sound?
- **Irvin:** So we require all of our hosts to be in compliance with local zoning ordinances. So if smoke detectors and carbon monoxide detectors were required in the house, we're expecting them to be in compliance with that. They then verify that their house does have all of those things. We're working right now on a system in which we actually send photographers into the listing and take photos, and then they'll be doing the check to make sure those things are actually there.
- **Rives:** I'm not sure I understood. First of all, that wouldn't be a zoning requirement; that would be a building code requirement. But there would be no inspections of that house to determine that it had functional smoke detectors, for example.
- **Irvin:** No. The house would be a house like any other on the street that doesn't get checked but people would be living there.

- **Rives:** That's right.
- **Peace:** Do you have further questions, Mr. Rives?
- **Rives:** I was just going to say that the distinction would be that I would be traveling across the country to stay in a house. And if I got there, I wouldn't know whether the smoke detectors were working or not when I set out to go on that trip. In my own home I know that they're working. So I think that's the type of issue that local governments would like to see addressed in one way, through this legislation or otherwise.
- **Peace:** Yes. And I think we're making note of that as well. Mr. Bradshaw has some information for a subsequent workgroup meeting because that may raise questions of liability insurance and those matters that do relate to public safety as well. Mr. Skiles.
- **David Skiles, Travel Technology Association:** I have a question more for my personal edification. How often are smoke detectors in hotels checked?
- **Ron Rordam:** Typically, hotels go through an annual inspection that's done by the local jurisdiction. The brands in fact require the exact same inspection. So the brands will come in on a branded hotel on a regular basis and inspect those items, as well as the local jurisdictions; they have to go through inspections as well. Things like bedbugs and all those things are all part of that inspection process?
- **Peace:** I have a question regarding the background checks. Can you walk everyone through how the background check process works?
  - **Irvin:** It's changed; I don't want to give you the wrong information. I can provide it for you if you would like it.
- **Peace:** Yes, if you could provide it to us, we'll put it on the website as well and offer that to every member of the workgroup.
  - **Irvin:** Sure, absolutely.
- **Peace:** Mr. Bradshaw.
- **Bob Bradshaw, The Independent Insurance Agents of Virginia:** I don't mean to have my back to you. If a host wants to have a copy of the insurance policy, the \$1 million insurance policy, to compare it to their homeowner policy, can they get that?
  - **Irvin:** I believe so. You would have to ask one of our insurance specialists in the San Francisco office. There is an insurance page that we'll go through as a host.
- **Bradshaw:** We've looked at what's on the website, and it's really not very helpful.
  - **Irvin:** Okay.

- **Bradshaw:** Frankly, insurance is state regulated, so a homeowner policy in Virginia could be very different from a homeowner policy in North Carolina. So it's very critical that a host have the insurance policy that you all provide to look for any gaps of coverage that they have on their homeowner's policy. Can you give me who it is I need to contact?
  - **Irvin:** Sure. I'll give you my card as well and make sure that you're able to get that information.
- **Bradshaw:** Thank you.
- **Peace:** Thank you, Mr. Bradshaw. Yes, Mr. Gordon.
- **Brian Gordon, Apartment and Office Building Association of Metro Washington:** Thank you, Jillian. I just want to thank you because you've been very good and open with talking with me over and over. I look forward to getting the information on the background checks. And I guess my question is, how thorough are Airbnb's background checks? I think that would be very helpful to all of us to know. I know in the past, it's been more you know who the person is and they definitely live there. So this is a change in what you've done, and it's going to be more thorough than what it was?
  - **Irvin:** Yes. We've gone through three iterations of it. When the company initially started in 2008, there was not as robust of a system. We've built up that team and build up a third party that we use to do the background checks. We just did have a change, which is why I don't want to give wrong information. I need to make sure that it's actually what we're doing now.
- **Gordon:** So if somebody's already signed up with Airbnb will they go—
  - **Irvin:** They'll be rerun.
- **Gordon:** So I want to sign up again, which I'm signed up now, you will go back through to make sure that there's nothing back there that the host needs to know about.
  - **Irvin:** That we didn't catch the first time, yes.
- **Gordon:** Okay, thank you. Let me ask you a little bit, if I can, about registration. I know that's a big question that we're going to deal with, should Airbnb be registered, should it not. I mean should each of the houses register. And again, we call you all out saying Airbnb, but it really is short-term rental. The case now in Virginia Beach where they needed to get hold of the owner, to have some sort of registration if somebody wants to have a short-term rental of their house, to have that registration through the locality would be very helpful to answer all those questions. What is Airbnb feeling about registration right now?



- **Irvin:** As you all know, it is a startup, so we're constantly changing and reevaluating the stances that we've had. We recently did pass a bill in Chicago that we allowed for pass-through registration, which we think kind of gets to exactly your concern. Basically, a host would register with us, and we would then pass on that information to the City of Chicago. We saw it work on the city level. Don't know exactly how that would work on the state level. But I think that it's something we're going to be looking at for this task force to kind of look through.
- **Gordon:** We're not just dealing with Airbnb, it's dealing with all short-term rentals in the legislation I think that we're talking about. That's one of the areas that I hear from localities that registration is so important to know. It's great that you all are going to do that. But if somebody else has a short-term rental through somebody else, we want to know that. It's very important for if there's an emergency situation or you have to respond to something or the neighbor has calls into the police saying what's going on next door. They can give them the toll-free number you all set up or here's what's going on. So I think as we go through this it's something to consider. I'm glad you all are thinking about doing that and passing it on. But as we look at every short-term rental in our localities, that's important.
- One thing you said I want to clarify a little bit is the difference between a lease situation and a short-term rental. Just sort of talk a little bit about localities' concerns with it. I live in a college town. Two years ago I had a fraternity house behind me. They were good guys, but they were a fraternity house. They were there for a year, and I got to know them, and we had discussions. It turned out to be as good as it could be. I have acquaintances who have purchased a property on the lake. After being there for a couple of years, there is a short-term rental next door every weekend. So most weekends they're going through the same situation that we went through behind us but with different people. So they're not able to build that relationship. So could you kind of help me with it? To me in my mind, it's not the same as a long-term rental because you're not building that neighborhood networking and responsibility.
  - **Irvin:** Right. And I think that's exactly what we're kind of working on with this neighborhood tool. We don't want to change the quality or the nature of a neighborhood. So if it is some place where it's more of a long-term rental place, we don't want to disturb or have any issues. So we are willing to and are looking at regulations that will allow for making sure that doesn't happen. One of the ways we can do that is making sure that the neighbors are comfortable with the hosting that's going on in the property nearby.
- **Gordon:** Okay. The only other point I'd kind of want to throw out, because we talked before about how zoning would still kind of be an overlay, when you have a zoning violation, you have 30 days to correct it. You have a house in the neighborhood with over-occupancy, and it's for that weekend, it's a zoning violation. But by Monday, it's corrected. And then you go through the same thing over and over again. So I think as

we look at these different issues, that's something. Zoning won't always come in and fix it because it takes a long process to go through. A letter has to be written and there's all the time to correct it. That's just something else we've talked about with Airbnb or just short-term rentals.

- **Irvin:** Okay.
- **Peace:** Mr. Mayor, does that complete your questions?
- **Gordon:** Let me make sure. For now, yes, Mr. Chairman.
- **Peace:** I appreciate that. Those are good questions. Yes, Amy.
- **Amy Hager, Bed and Breakfast Association of Virginia:** Jillian, we've talked a few times. I'm also speaking with Tammy at Airbnb. The question that I'm getting from the legitimate properties who want to advertise on Airbnb is, what do we do right now about collecting and remitting our taxes? So they collect their taxes if they're on any other websites, plus their own. The advice from Airbnb right now is to wrap the tax into the list price and list it on the website.
  - **Irvin:** It's only when we're collecting or remitting on behalf of the host, right?
- **Hager:** Exactly, when Airbnb collects. When a legitimate property who is collecting taxes wraps that price in and that's what's advertised, that means Airbnb right now gets to collect commission on the tax money that's being collected and remitted by the legitimate businesses?
  - **Irvin:** That would be true, yes.
- **Hager:** Okay. The other question that I've been getting a lot lately is what doesn't the insurance policy cover? From my understanding from opening properties is that a homeowner's insurance is void as soon as there is exchange of money for the service. Is that when your policy comes in to cover them or is liability included with your policy?
  - **Irvin:** I'm not sure if the first part of your comment was correct, so I don't know how to answer the second. I know that if and when something does occur during a hosted situation with a guest, then is when our policy will come in. It doesn't touch the homeowner's insurance itself.
- **Peace:** It wraps around it.
  - **Irvine:** Yes.
- **Hager:** So if they only have homeowner's, then your policy will cover it.
  - **Irvin:** Yes, I think. Say that again.

- **Hager:** They only have homeowner's, meaning they don't have liability coverage. When they do operate a legitimate business, they have to have liability.
  - **Irvin:** Exactly.
- **Hager:** So yours is liability.
  - **Irvin:** Yes.
- **Peace:** Is that any different, if I might jump in, than if I'm a homeowner and I have a party at my house—we have a lot of parties—and I might even have an ABC site banquet license for other activities, I would be smart to get a rider on my homeowner's policy to cover that event. Is that right? So yours is somewhat analogous to that kind of scenario. Is that what you're saying?
  - **Irvin:** Yes, exactly.
- **Peace:** Okay, very good. There are a lot of questions about insurance. I've taken notes on that, and staff has, and public safety generally. We are going to have Mr. Bradshaw and others, once he gets a chance to connect with Airbnb and other short-term renters, to further flesh that out. So thank you. Do you have any further questions? Okay. Delegate Bulova.
- **Bulova:** I have a quick follow-up question on enforcement. I imagine that your system is set up that if you got a bad actor who is using a property and there is a complaint against them or you get multiple complaints that you're going to boot them off of the system.
  - **Irvin:** Yes. We have certain zero-strike policies. Absolutely if something egregious were to happen, we would be able to take them down immediately.
- **Bulova:** On the flip side, let's say you have a property. The property owner might not technically be doing anything wrong, but you've also got habitual use of the property that gets complaints. Is there a way to say hey, enough is enough, you as the property owner are going to get penalized because your residents or your users are perpetually being bad actors in the neighborhood?
  - **Irvin:** If by property owner you mean the host, then yes, absolutely we would take them down if there were repeated bad actions. We do try to cure the situation by contacting them and saying hey, this has been brought to our attention, maybe by the neighborhood hotlines. But if it were egregious enough, we would take them down immediately. If not, we would give them one or two chances and then be able to take them down.
- **Bulova:** Is that subjective or is there an actual standard that says hey, two strikes, three strikes?
  - **Irvin:** There's a three-strike policy.

- **Bulova:** There are three strikes, okay. Thank you.
- **Peace:** Senator Stanley, welcome to our workgroup. We are so glad to have you as a member of the Housing Commission.
- **Senator William Stanley:** Thank you. It's very nice to be on this Commission. I've been reading all over this. I'm trying to catch up in understanding what issues are here. I ask for a series of questions. I'll try not to be a mayor and just stick to a senator, but that may be worse.
  - I'm reading your Responsible Hosting statement, which of course is right here. It goes over certain things that the host should be doing and maybe not be doing. It says we encourage you to pay your taxes, follow the zoning rules, and be a good neighbor. But there's no obligation. It's just telling them what they should do, but there's no corollary obligation for them to do so. Why not?
    - **Irvin:** Partially because we're an international operation. The laws and rules that we have for our hosts throughout the world are going to be different. The requirements that we have on the website need to be generic to cover all of that. If it were to be a particular area and have each thing out, we just have the bandwidth in which to do that.
- **Stanley:** I was looking at how you do have a policy in there encouraging them to find out what the tax policies are in the localities where the host has the home that they're renting out. But it also seems to me from what you just said to me and to us here on the Commission where you—let me make sure I get this right—encourage the host to wrap the tax price into the overnight stay price. Is that right?
  - **Irvin:** If that is their concern. It's required upon them to pay the taxes. If they want to wrap it into the price and know that and bump the price up, it would still be the hosting price for the accommodation.
- **Stanley:** And you would participate in helping them find that out or allow them to do that, is that right?
  - **Irvin:** The price they're going to be paying or the price they post their home for is entirely up to them.
- **Stanley:** Wouldn't you then by in fact be taking a commission on taxes if they did that?
  - **Irvin:** No. That is the amount of money that they take home, and then they are going to be reporting the percentage for taxes out of that.
- **Stanley:** And that's minus your Commission, correct? It's \$100 a night, but I have 10 percent in taxes, so it's 110. You're taking your percentage commission on the 110 not the 100. Isn't that true?

- **Irvin:** This is exactly why we're here trying to talk about legislation, so that we can deal with exactly this situation.
- **Stanley:** I guess what I'm saying is right now that's the policy. If somebody decides to bump up by 10 percent, a \$100-a-night room to 110, you're taking the commission on the 110 not the 100, right?
  - **Irvin:** It's not a line item. There's no way for us or anyone else to know what the taxation piece would be.
- **Stanley:** Why not?
  - **Irvin:** Because the price that the host posts their accommodation is entirely up to them.
- **Stanley:** But you're encouraging them right here in your Good Host Good Neighbor Policy to wrap that tax price into the price, and then you take the commission. There is no formulation of extracting that tax price so you're only taking commission on the price, not the tax that they're withholding or charging extra. Right? I've read this whole thing. I'd like to see that you're not taking a commission on taxes that people are choosing to add on to the short-term rental, but you are, unless we have some kind of mechanism to change that. Is that right?
  - **Irvin:** That's exactly why we're coming to the state to look for a change to fix that. We cannot step in and collect and remit without the state authorization to do so.
- **Stanley:** Looking at the responsible hosting, I would encourage everybody if you haven't looked at it yet, I think that's something that's important in trying to discern how we go about this potential legislation. It seems like that's the only training you have for hosts, that is please read this. Is there any other training for hosts for short-term renters, the people that are renting these properties?
  - **Irvin:** What do you mean by training?
- **Stanley:** They're hoteliers, in a sense, or at least they're renting out their places. You tell them about minimizing hazards and stuff like that. You encourage them to at least disclose if there are cameras. Is there any kind of training? They're hosting people and with that comes certain liability. As an attorney, I know that some people are not educated on those liabilities.
- **Peace:** It's a licensee versus not.
- **Stanley:** That's right. I don't see where the liabilities are really explained to people that might affect their homeowner's insurance. I had a beach house that I rented out. I don't even know if there's an insurance product for this. The potential pitfalls for the host don't seem to be spelled out. Other than "read this," there doesn't seem to be any

training through Airbnb for the potential host, which could leave the potential host in a serious liability position if something were to happen. Is that right?

- **Irvin:** No. We do have training beyond what is actually written on the website. We do have yearly what's called Airbnb Open in which we go through exactly that. We've got podcasts that people can listen to as well to encourage them to talk to other hosts in the community, figure out exactly what's working. We will contact them if they do have a problem and walk them through some good hosting tips.
- **Stanley:** Again, this is my lawyer hat being on. So you encourage them to read this policy. You don't do any training. In terms of compliance, do you get them to certify "we will comply or face penalties"? And if so, what are those penalties if they don't comply with minimizing hazards with disclosure of cameras? We live in a digital society where people have cameras all over the house. This could be a trap for someone to put cameras around the house and be peeping using their own house to a renter. What happens? Do you say, "I promise I'll comply," and if they don't there are penalties? Have you figured that one out?
  - **Irvin:** If we were to find out about something like that, we would take them off immediately obviously.
- **Stanley:** You just kick them off. You don't have any other penalties?
  - **Irvin:** Other than not being able to host anymore, no.
- **Stanley:** Okay. What if a local government comes to you and says that renter A on Airbnb is not complying with their tax policies, not paying their taxes, what do you do?
  - **Irvin:** We're trying to figure out a way in which we can step into the shoes of our host and collect for them. We're trying to mitigate situations exactly like that.
- **Stanley:** I'm encouraged by that. If I remember correctly when we were here, there were news articles in Richmond on how Richmond disallows and specifically makes illegal short-term rentals. But Airbnb came in here and flouted the law anyway. I'm concerned that perhaps you're not going to be good partners with our localities if there is a tax discrepancy, and that is the non-payment of tax by the host, or there's a zoning problem. Who do they go to? Do they go to you or do they go to the host?
  - **Irving:** They would go to the host. Let me clarify about where the liability actually falls here. Airbnb is the platform in which people are hosting through. So people here in Richmond that decide to be on the platform are posting their home on it. It's not incumbent upon Airbnb, and it's not something that Airbnb is looking into whether or not they're in compliance with certain regulations. That's incumbent upon the actual citizen that lives here.

- **Stanley:** Mr. Chairman, if I may. That gets me to my point exactly. When you go to the bottom of this Responsible Hosting page, it says, "Please note that Airbnb has no control over the conduct of hosts and disclaims all liability." Is that true?
  - **Irvin:** If it's on the page, it's written in our policy.
- **Stanley:** Airbnb's policy is basically disclaiming all liability that might arise from the host's actions to the renter, to the guest, right?
  - **Irvin:** If that's what's written on the page, I'd have to double-check it. But if that's what's written there . . .
- **Stanley:** As lawyers when we write things, we always put stuff in the contracts, you know that. But how do you think you can disclaim liability generated by a host that doesn't comply either with your suggestions here or commit some kind of liable act that results in the injury of a third party who comes and rents their place overnight? You're conducting both ends of this transaction, which is you're advertising the property. And by advertising the property, it seems to me that you're warranting that it's habitable, and it's intended use, and that it's going to be a good place and a safe place, and it's a nice picture. And then you control the transaction, which is controlling the transaction in accepting the money after advertising. The third party gives the money, and has an expectation, and then you disclaim all liability if there's a problem from the host.
  - **Irvin:** I'm sorry; was there a question in that?
- **Stanley:** Yes. How can you do that?
  - **Irvin:** How?
- **Stanley:** Yes.
  - **Irvin:** As you know as an attorney, we do put that language down. We do then have the \$1 million policy that will protect against issues that happen.
- **Stanley:** Can you explain to me how your \$1 million policy is in effect? I carried Uber legislation. And it was a concern for us to make sure that we were protecting not only the driver, the Uber driver, but also the person, the very precious cargo of the Commonwealth, our citizens, in the back. If you disclaim all liability from any action by the host, when does this liability kick in for a third party that comes in, rents a place, and is injured due to the negligence of the host?
  - **Irvin:** As soon as they would make the complaint, we would go through the formal process that we always do and make sure that they were taken care of. I can get a copy of the insurance policy if you would like and if that would make you feel better. I'm confused as to where the actual question is.

- **Stanley:** Ma'am, it's a very direct question. Nothing is going to make me feel better except knowing that the people that are going to be renting these places have a reasonable expectation of safety and of privacy and to make sure that we are not creating a whole host of liability, which for Delegate Peace and myself might be very profitable for our industry. Quite frankly, that's not why we're here.
- **Peace:** Yes, please don't say that.
- **Stanley:** My question is again, when does the policy kick in? That was a very direct question. If you disclaim everything from the host—host, we have no liability for the owner of this property. We are not liable for the owner. When does it kick in to protect the third party who rents?
  - **Irvin:** As soon as the guest enters the host home, we have insurance that's going to cover the entire time of their stay.
- **Stanley:** Insurance coverage, when there's a claim that is covered. But how can it be covered if you're claiming that you disclaim all liability from the host, for any action of the host?
- **Peace:** I think one of the questions that we want to answer in the subsequent workgroup is what is the privacy of contract between the host and guest, the invitee versus the licensee issue that you're bringing up, and whether they should have a policy. I believe some of the legislation this past session actually offered that. So that is certainly on the table.
- **Stanley:** And I don't think we really took care of it. The thing is right now we have a transaction here where the host is really offering the house, but they're controlling both ends of the transaction and disclaim all liability coming out of it. In a great world, that would be wonderful. But that's not how reality works in the Commonwealth of Virginia.
- **Peace:** I don't think that they can disclaim the liability of the host, stepping into their shoes and doing that. I don't think they can, but we're going to find out and answer that.
- **Stanley:** I have two more questions, because I've been writing them all down. I read this Penn State study where it says in 12 or 15 major cities that you're in, at least 30 percent of those hosts using Airbnb are renting their houses 365 days a year. That's not a short-term rental. That's a hotel. I had to get a special in Charleston to rent my house out.
- **Peace:** And at that point, Senator, it would not be their primary residence.
- **Stanley:** That's correct. Are you going to notify the local government that that's occurring? You're going to have that information. That's going to be confidential. So what are your triggers to notify the locality that they've crossed the line out of short-



term rental and are actually doing this or have multiple units and are using your platform not in the way it was intended?

- **Irvin:** Those are all part of the negotiations that we are having across the country, across the world with cities and localities to deal with exactly that.
- **Stanley:** Because you disclaim all liability for the host, do you believe that that will ultimately be your responsibility to have that kind of relationship with our localities? Can you promise to me that you'll do that?
  - **Irvin:** No, I cannot.
- **Stanley:** Okay. Thank you, Mr. Chairman.
- **Peace:** Thank you, Senator. I appreciate it. Are there further comments or questions? I think this nice lady wanted to ask one.
- **Peace:** Okay, very good. Mr. Mullen would like to have the floor.
- **Edward Mullen, Reed Smith:** Mr. Chairman, just to hopefully close this up. A number of the questions I think Senator Stanley is asking are very good ones, and they're good ones for courts, not necessarily for the legislature. But on the tax issue that he started out with, fundamentally the responsibility of the host is we brought a bill this year to try to set up a collect and remit system whereby we could help with that.
- **Peace:** Are there further questions or comments for Jillian? I think we have one last one.
- **Rordam:** Thank you, Mr. Chairman. I have a comment and a question. Back to the question the senator asked. There are innkeeper laws that we comply with, that hotels comply with that kind of restrict and require you to do many of the things that he brought up. The question comes back to the compliance and your comment. Is there a written policy of when someone is delisted and when they can come back? What's the criteria on the strikes? Is that something we could have a copy of?
  - **Irvin:** It's not something that we share publicly.
- **Rordam:** Okay. If you won't share that publicly, how does the mayor of Blacksburg know what you're going to do in the Town of Blacksburg?
  - **Irvin:** That's why we're working on regulations to deal with these issues. Right now it's just something that's up to the company.
- **Male:** That's interesting.
- **Peace:** One last question, Mr. Rives.

- **Rives:** I promise that my questions are easier than Senator Stanley's. I think the 24/7 hotline is a great idea, and it's a good step forward. But I'm not sure I understand how the neighbors of rental property or local code enforcement or law enforcement would know that if they have a problem at a house that it's Airbnb that needs to be called as opposed to some other platform or whether there is a platform at all. If you we don't have registration of short-term rental properties, what mechanism is there for local officials or for neighbors to know who to call, who to complain to?
  - **Irvin:** There currently isn't one.
- **Rives:** Do you think it would be a good idea to build into whatever legislation comes through—some sort of mechanism that would assure that people know who to call?
  - **Irvin:** Absolutely, that's what we're here to discuss.
- **Rives:** Okay. And it seems to me that registration is the obvious way to do that.
  - **Irvin:** There are several ways to do it, but that is one, yes.
- **Rives:** Thank you.
- **Peace:** And I think Mr. Rives knows that the realty community has long opposed registration of their rental properties, which possess some similar challenges. So we'll probably have to have that on the table as well when you open the door to that.
- **Rives:** That's a great idea.
- **Peace:** I know you think that, that's why I said that. I know you agree. We have taken a pound of flesh from this nice lady. Are there last questions that have not been asked of her? Yes. Please state your name, if you don't mind.
- **Maggie Ragon, Commissioner of the Revenue, City of Staunton:** If I as a locality am aware that I have a host in my locality and that that host is not collecting and remitting as has been suggested, so they're in violation of the locality ordinance and requirements, and I report that to Airbnb, would that be an offense with which you would declassify them as a host?
  - **Irvin:** No.
- **Ragon:** Should I ask why not?
  - **Irvin:** Because we're trying to work with localities to be able to collect and remit. We don't think that most of our hosts are really sophisticated enough to figure out the nuances of the tax codes. We're trying to figure out a way to ease that burden for them so that we're actually able to ensure that things are happening, so even if you don't know that someone's on the platform or is or isn't collecting, we're guaranteeing that they are.

- **Ragon:** So just two follow-up comments to that and not another question. If the folks that we do have are sophisticated enough to get that and are doing that, and if we did have that listing, then we would be able to work with them on that. Thank you.
- **Peace:** Thank you all very much. Thank you, Jillian. I appreciate it.

#### IV. Tax Implications

- **Peace:** Next we have Mark Haskins from the Virginia Department of Taxation. He may be wanting to leave before he takes the lectern.
- **Mark Haskins, Policy Development Director, Virginia Department of Taxation:** Thank you for warming them up, Jillian.
- **Peace:** This is the point of the workgroup, so I think it's great.
- **Haskins:** I'm technology challenged here, so hang on just one second.
- **Peace:** Mark, thank you for working on this issue for the last eight months and for your diligence and for your creativity.
- **Haskins:** I'm Mark Haskins. I'm the policy development director of the Department of Taxation. We were contacted back in December to start working on this with the legislature, Delegate Peace, last fall.
  - I'm going to talk mostly about state taxes. There are state taxes that apply to these transactions and local taxes. The Department does not have a responsibility or an obligation or the authority to collect the local taxes, so I'm just going to briefly talk about those. Delegate Peace, if you all would like a presentation on local taxes, it probably would be better served by having someone from one of the localities to talk about it.
  - I want to open with retail sales and use tax. In Virginia, the retail sales and use tax is a very narrowly applied tax to sales of tangible personal property. Virginia taxes fewer services than practically any other state. However, one of the services that Virginia does tax is the sale of transient accommodations. And the sale of transient accommodations means the sale or charge for any room, lodging accommodations furnished to transients for less than 90 continuous dates by any hotel, motel, inn, tourist, camp, camping ground, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for consideration. It's a broad definition, but it also is limited. It only applies to the entity that is providing the room. It doesn't apply to entities who just make arrangements for providing rooms. We'll talk about that a little bit more.
  - In Virginia, the general sales tax is 5.3 percent. That includes a 1 percent local option tax that is imposed by all localities. There's an additional seven-tenths of

a percent that's imposed in the Hampton Roads and Northern Virginia regions. There it's a total of a 6 percent tax. One percent is the local option, .7 percent goes back to those localities for transportation purposes. It's very dedicated.

- As I said earlier, the retail sales tax is imposed on the gross proceeds from the sales or charges for hotels and rooms furnished to transients. We started off with a sales tax in 1966, and we knew what a hotel was. It was pretty easy to apply the tax because a hotel and a motel, they had a big sign out front, and we knew they rented rooms to transients. So most of the rules were developed based upon that model.
- We dealt with over years additional charges that are made in connection with a rental of a hotel room, and that could be considered part of the charge for the room, and that's also subject to tax. That would include the charge for pay-per-view movies, television, video games, local telephone calls, and similar services. So when you rent a hotel room and you get a bill for some of these issues, the Virginia retail sales tax applies to those. It would also apply to any markup charges made for local. It does not apply to long distance phone charges.
- Internet access services and toll charges for long distance telephone calls furnished in connection with the rooms are not subject to the tax. But separately stated charges for services provided by outside vendors that are not required to be purchased by the guest, such as dry cleaning services, golf, tennis lessons, and beauty services, are not subject to tax. Separately stated charges for travel protection insurance are not subject to tax. So generally it's the amount you pay for the room and things that come with that room.
- The Department has long held—and we cite in the presentation a couple of public documents, one from 1987 and one from 1991 that are available on our website—that the operation of a bed and breakfast is subject to the sales tax in the same manner as it would be for a hotel. It started off in 1966. We had hotels; we knew what they were. We knew what motels were. Bed and breakfasts came along, and we said they meet the definition. They're providing rooms to transients for less than 90 continuous days. They're acting like a hotel or a motel. The same tax is going to apply there. And in the same way, extended-stay hotels and similar lodgings are subject to the sales tax until you get to the 90 days.
- It does not apply to accommodations supplied to a guest for a period of 90 continuous days or more. If you rent the room, you're going to be charged tax for the first 90 days. Once you get over 90 days, then the tax does not apply.
- The next issue the Department dealt with in the evolving world of transient accommodations was online travel companies. This is not Airbnb. We're talking about the hotels.com, the Expedias of the world. They operate somewhat differently than these hosting platforms where Airbnb operates. The online travel companies enter into contracts with accommodation providers to allow guests to reserve accommodations on their online website. Most of these companies don't

have any physical presence in Virginia, and these companies don't own the rooms. They don't provide the rooms. All they provide is the intermediary connection. They make an arrangement with the hotels to say if you have any extra rooms, we will rent them for you at a reduced price. They have a deal with the hotel of how much they pay for the room, and they also have a price that they charge to a guest who goes through an online travel company.

- That's been the subject of legislation several times in the last 10 years with the General Assembly over how should the tax be collected on that. Should the tax be collected with an online travel company? Should it be collected on the amount the hotel gets for the room or should it be collected on the amount that the online travel company charges for the room? The Department issued an opinion in 2006 that said these companies are not subject to tax because they don't provide the rooms themselves. They don't own the rooms. The hotels own the rooms, and the tax is charged on what the hotel charges for the room. So under Virginia law and our interpretation, the tax with an online travel company rental is paid on the amount the hotel gets, not on the amount that the online travel company gets for renting that room.
- Again, that's been an issue around the country. It's been litigated in multiple jurisdictions. There has been legislation in different states, different localities. So far, any legislation to change that has failed in Virginia. So in Virginia, if Hilton used Expedia—I'll pick on Hilton since my friend from Hilton is sitting right here. If they used Expedia or hotels.com to rent a room and they gave the room to Expedia or hotels.com for \$70, and Expedia rented the room for 100, the tax would be paid on the 70. The tax would be collected by hotels.com, remitted back to Hilton. Hilton as the hotel has the rooms, that's who the tax is applied to, and they would remit the tax on what they got for the room, not what the room was rented for. That's been an ongoing issue in Virginia for the last several years.
- Moving forward to 2016, we start dealing with hosts and hosting platforms.
- **Senator George Barker:** Mr. Chairman?
- **Peace:** Senator Barker, I heard his voice.
- **Barker:** Yes. I have just a quick question. If the hotel rents the room to Expedia or whoever, and Expedia does not rent that room, is a tax collected on the \$70 that Expedia paid for that room even though no one stayed in it?
  - **Haskins:** My understanding, Senator, is that unless they rent the room, they don't pay anything. They have the right to x-number of rooms at a particular price, but they're not buying the rooms and re-renting them. They just have the right to x-number of rooms. So there's no tax unless it's rented.
- **Skiles:** Mr. Chairman?

- **Peace:** Yes, Mr. Skiles.
- **Skiles:** Can I just answer Senator Barker's question? It is a contractual relationship that an online travel company has with a hotel. So if the room goes unrented, there is no cost to the online travel company. So Mark is exactly correct. If that room doesn't get rented, it's in the hotel inventory.
- **Barker:** The hotel didn't get any money; the state doesn't get any tax.
- **Peace:** Please carry on.
- **Haskins:** So now we come to the host and the hosting platform companies. Many property owners are seeking to rent out their primary residence utilizing the website hosting platforms. As you heard, it enables the owner to list and arrange for the property's rental. From the Department's perspective, hosting platforms are not offering guest rooms for rent. Just like the OTCs, the online travel companies, are not renting rooms, the Airbnb in the hosting platforms don't have rooms that they rent. So there is no tax obligation in Virginia on the hosting company. The obligation is on the host.
  - If you go back to the definition of what is a transient accommodation that is subject to the sales tax, it is any other place in which rooms, lodges, space, or accommodations are regularly furnished to transients. None of the rooms belong to Airbnb or any of the other hosting platforms. They belong to the homeowners. So the homeowner is the person who is making the transaction. They have the room. They're renting it out just like a bed and breakfast, just like a hotel or motel. So the tax obligation from the state and I believe the local perspective lies with the host, not the hosting platform.
  - As I said earlier, we have a long history of interpreting the tax to apply to temporary rentals or private residences based on the sales tax treatment of hotels. We apply it to bed and breakfasts, the OTC, and on down the road. In each case, what you have is a charge for lodging, space, or accommodations that are regularly furnished to transients. And that's the key in Virginia law. Again, if it exceeds 90 days, then the state sales tax would not apply.
  - Hosts offering up private residences for temporary rental in Virginia, they're in Virginia, they have a physical presence, we have the authority to collect the tax. And the host has the obligation to register and pay the tax, other than the case when it's an occasional sale. An occasional sale by statute is when you engage in an activity for three or fewer occasions. So if I rent out my room once a year, that's an occasional sale. But if I'm in the business of doing it, I do it more than three times, and I'm registered with Airbnb or one of the other hosting platforms, then I'm regularly engaged in business providing transient accommodations. The host needs to register, collect, and remit the sales tax.

- **Peace:** Mark, may I ask a question on that? When you say three times, is that three nights? What is the unit when you talk about a time?
  - **Haskins:** It's three separate occasions within one calendar year.
- **Peace:** An occasion might be if someone dies and there's a weeklong whatever you call it, wake kind of thing, and we want people to come into town. My neighbor will rent their house out. A week could be an event.
  - **Haskins:** A week could be an event.
- **Peace:** So you could do that three weeks a year or a month, for example. So it's really pretty unlimited at this point, even though you say it's three events.
  - **Haskins:** Right. The other part of it, which I really hadn't gone into, is whether you're regularly engaged in the business. I think from our perspective, if you were advertising through Craigslist, Airbnb, you're in the business of doing this. Maybe you're not a very successful businessperson and you only do it three times a year, but you're in the business.
- **Peace:** Mark, just one last point and then I'll let you carry on. Thank you. I have a river house. And I have three events that I consider June, July, and August. I could have someone come to my river house, to your question about the lake or whatever, and I could have somebody rent that and pay me. I could put it on Facebook as a platform and do it, correct, three times. If it's not more than three times, I'd be okay.
  - **Haskins:** You're getting close. You're skirting. We may need to talk afterward, Delegate Peace.
- **Peace:** I disavow that question.
- **Haskins:** State law currently requires each host to register with the Department, collect and remit the tax on the rental transaction based on the location unless it's an occasional sale.
  - Now, how many hosts are actually doing this? We don't have any data. We don't have any way of verifying when someone registers with us. There's not a box they check to say we are an Airbnb or we are some other company using a hosting platform and this is why we're registering. We don't have any data on that, but just anecdotal evidence, and from what I'm hearing here, and the experience that Charlottesville had, I would suspect that of the 35 to 4,500 hosts that are currently working with Airbnb in Virginia, there's a very small percentage of those that are registered with the Virginia Department of Taxation and doing this as the law requires.
  - From a compliance perspective, is it worth sending an auditor around to everybody's house, knock on the door, and ask if they rent their house? No, that's probably not something we want to do.

- What the Department has done in the past with similar types of arrangements, and not necessarily in the hotel or the hosting platform arena, but where you have multilevel sellers, we have administratively allowed an aggregator—and we're talking a Mary Kay, an Amway, those types of transactions, flea markets—instead of each individual person who sells Mary Kay or each individual person who sells Amway registering, we'll let a district level person register, take on the responsibility to remit the tax from each of the people who work under them. So we have done this administratively.
- When that happens, each individual does not have to register, just the district level or the aggregator registers. We have a pretty standard agreement where the company is required to maintain records and transactions at the corporate offices available to the Department. But we don't typically ask for the name of each of the individuals. We say okay, this person has agreed to take care of all of the sellers who come under them.
- When we first started talking back in December about what turned into Senate Bill 416 and the resulting House bill that Delegate Peace had, we looked at this and said administratively we do something like this now. We have a process where we administratively let one company or one person aggregate and remit the tax on behalf of a lot of people. If there are 3,500 or 4,500 or 5,000, it certainly makes more sense to have one entity responsible for remitting the tax and registering than to have each of the entities, each of the hosts remit. Plus it's easier compliance, it makes our life easier, it makes their life easier. You don't have to file returns every month. You don't have to go through the registration process. So when this was presented to the Department, we looked at it and said what this bill would require the Department to do at the state level is very similar to what we have done administratively, and it would just codify what we have the authority to do anyway.
- What was different about the legislation that was ultimately introduced is it would have required that the Department collect not only the state retail sales and use tax, but the local transient occupancy taxes. And as I said earlier the Department has no authority to collect any of the local or regional taxes absent legislation such as Senate Bill 416. Whether that goes forward or not, that's certainly something that would require legislation if the desire is for us to do that. Like we would do at the state level, we could do it at the local level, too.
- Now I'll speak just very briefly on local transient occupancy taxes. Any county by ordinance may impose a transient occupancy tax at a maximum rate of 2 percent on hotels, motels, boarding houses, and other facilities offering guest rooms. Some counties are authorized by statute to impose the tax at higher rates. Generally, any tax above 2 percent is dedicated toward tourism. So there's a long list of counties who have the authority to collect a higher tax.
- At the transient occupancy county level, while the state has a 90-day continuous requirement before you don't have to pay tax, there's a 30-day requirement.



That's one difference. But generally when the state tax applies, the local transient occupancy tax is going to apply to the same transaction with that one exception.

- Cities and towns have authority to impose a tax without any rate limitation in Virginia. According to the Weldon Cooper Center's annual tax rate books, 36 cities, 76 counties, and 73 towns have reported that they impose the local tax.
  - In addition to the local transient occupancy tax, in 2013 House Bill 2313 imposed a 2 percent state regional transient occupancy tax in Northern Virginia that's administered and collected locally in the same manner as a transient occupancy tax. That money, like the .7 percent, is dedicated to transportation needs.
  - That's a brief overview, and I apologize for my lack of abilities to work the overhead. I know you all don't have any questions. Senator Stanley has no questions.
- **Peace:** We're going to pass by Senator Stanley's questions.
  - **Haskins:** I believe Senator Stanley used up all his questions on the first presenter.
  - **Peace:** I'm just kidding.
  - **Stanley:** I only wrote five down here.
  - **Peace:** Comedy is hard. Senator Stanley.
  - **Stanley:** Thank you. What I see here is that there is confidentiality of the host, and we've been discussing this. So how do we track who's an Airbnb host and who's not in terms of the state? How are we going to be able to collect that data and track that data?
    - **Haskins:** Under the legislation that didn't pass, there was a confidentiality of the name of the host. The Department had worked with Airbnb. We felt comfortable that Airbnb was going to be the taxpayer. We may not know the name of the particular host, but they would tell us that they had 32 hosts in Hanover County, 42 hosts in Franklin County, and that host #1 collected this amount of money and remitted it. Host #2 collects that. So our view of the legislation that didn't pass was that Airbnb would be the taxpayer, and we would review their records of income statements and that type of thing. We felt comfortable we could track it through.
  - **Stanley:** Mark, does the Department of Taxation have real concerns? I felt uncomfortable that they were even addressed in the old bill, but do you have concerns about the inability to audit and track tax payment data here? I think it was the attorney general in Maryland or maybe the comptroller of Maryland in an article said, "I've got some real problems here of how we're ever going to accurately be able to track and

compile this data accurately to make sure that we're not missing out on tax revenues." Do you share those concerns?

- **Haskins:** I think we share the concerns. Our goal is to try to collect the tax revenue. I see this as a much more efficient way to collect it than what we have today. It's an improvement over what we have today. Is it perfect? No, it's not perfect.
- **Stanley:** In thinking about what this system is, because it would be unique, at least of what I can think of in my mind, how many other taxes does the Commonwealth of Virginia collect on behalf of local governments where there's no ability to track or audit the payments?
  - **Haskins:** I guess what comes to mind is the communications sales tax. That money gets distributed back to the localities. The Department has the authority to audit. The localities do not have the authority to audit. And the audit data is not provided to localities. That's just one example that comes to mind, Senator Stanley.
- **Stanley:** Okay. You heard my question about they are basically charging a fee to the transient—let's call it a transient. We have historically had a transient occupancy tax. The tax is paid by the transient. The hotel collects and remits, but the transient bears the cost. I asked the question if a host decides he's going to wrap that payment, that tax obligation into that payment, it seems that Airbnb is then taking a commission off the tax that the man is collecting even though he didn't say he's collecting it so he can pay the tax. How do we track that? How do we take care of that?
  - **Haskins:** That caught my attention too, listening to it. In Virginia, you cannot absorb the tax or include the tax in the base. It has to be separately stated in Virginia, unless you have permission. So going forward, our expectation would be that the tax would be a separate item, not rolled in. There wouldn't be a commission on top of the tax.
- **Stanley:** Just following in that line, let's say you're renting for \$100. That's what I used before. Shown to the transient, the renter, is the \$9 collection fee that Airbnb takes. The host never sees that collection number; he never sees the \$9 going to Airbnb or whatever that fee is. Now we're not collecting from the homeowner. Is it 100 or is it 109 or a hundred and whatever they've taken?
  - **Haskins:** The Department would see the tax would be on the \$100.
- **Stanley:** Not the 109, even though that was charged to the transient who usually pays the transient occupancy tax in Virginia.
  - **Haskins:** The \$9 is a fee that's going on between Airbnb and the host. That's coming out of their pocket. We're seeing the room rented for \$100, so we would expect to get the tax on the \$100.

- **Stanley:** Mark, in that \$9, there is a nexus because it's a host who lives and has property in Virginia who is then using this platform. Is that \$9 that goes to Airbnb taxed under the state tax system here?
  - **Haskins:** If Airbnb has a physical presence in Virginia and has nexus for corporate income tax, for income tax purposes Virginia would collect income tax from Airbnb.
- **Stanley:** And finally, Mark, if any kind of hosting platform like Airbnb entered into an agreement like we're talking about on centralized tax collection, in order to be accurate on the collection and remission, would that be considered a public document? Because confidentiality seems to be the cornerstone of Airbnb. But I don't know that we can do this.
  - **Haskins:** As far as the companies that we have agreements with, the aggregator companies, the Mary Kays and that type of stuff—and I'm just using those names off the top of my head because it's not with the companies, it's with a district level person—those are confidential. Any of those agreements the Department has for any aggregator are confidential and we can disclose those.
- **Stanley:** But any agreement on centralized tax collection and remission between the hosting platforms, the agreement would be a public document. Would you agree with that?
  - **Haskins:** Maybe I'm not understanding the question, Senator Stanley.
- **Stanley:** All right. If a hosting platform entered into an agreement for centralized tax collection and remission to the Commonwealth of Virginia, would that agreement be a public document?
  - **Haskins:** Absent this legislation, if they just came to us and wanted to do one of our standard agreements, it would not be public. It would be protected because it would have the name of a taxpayer in it.
- **Stanley:** Thank you. Mr. Chairman.
- **Peace:** Thank you. Mr. Flynn.
- **Mark Flynn, Governor Appointee:** To liven things up a little bit, I'd like to get into constitutional law, if I may, which of course, Mark, you've been skating around constitutional law this afternoon. Last year's legislation had the *shall register* versus *may register* debate. And there was the nexus issue. From the local government's perspective, the transient occupancy tax is clearly—there's no question it's owed when that transaction occurs.
  - **Haskins:** And the state's position is the retail sales tax is definitely owed.

- **Flynn:** I'm not talking about sales tax, right. What's your sense of how to accomplish getting it paid with the *Quill* decision, with the nexus issue? Do you think the nexus is there for an Airbnb?
  - **Haskins:** I think the *may* took care of that because you can voluntarily agree. We have a lot of companies that don't have a physical presence under the *Quill* decision in Virginia that collect and remit sales tax as a convenience to their customers. But as far as our ability to go out and enforce it, we are limited by the U.S. Supreme Court decisions.
- **Flynn:** If I may follow up, then, do you have a sense of how to balance those two issues, one being the tax needs to be paid, and then on the other hand we are trying to come up with a comprehensive system for collecting it. You know the obvious difficulty with the *may* register is that a company, a hypothetical company may choose not to register.
  - **Haskins:** I agree. I guess what this working group is here for is to resolve that issue.
- **Peace:** Was that your last question?
- **Flynn:** I have a quick follow-up on the point. Mark, just to point a fine point on that, in your view, would it be constitutional for the Commonwealth or for a locality by ordinance or by statute to require a hosting platform to collect and remit on behalf of hosts?
  - **Haskins:** It may be constitutional if the hosting platform is in Virginia and they have a physical presence in Virginia.
- **Flynn:** If it's absent that.
  - **Haskins:** Absent that, if the state passed a law it would probably be suspect constitutionally based upon what the U.S. Supreme Court has said.
- **Flynn:** I have a quick follow-up, Mr. Chairman. In that regard, the way to accomplish this, if there is a company, a hosting platform that thinks it's good business to collect and remit on behalf of its hosts, not only the state sales and use tax but also the local transient occupancy tax, the way to accomplish that is to come forward with a voluntary agreement. And in some certain situations, it needs to be facilitated by statute in the case of local taxes? Is that right?
  - **Haskins:** Yes.
- **Peace:** Yes ma'am.
- **Ragon:** Maggie Ragon. You mentioned the communications tax. That is a state tax not a local tax, correct?

- **Haskins:** It's a state tax where all the money is returned to the locality.
- **Ragon:** Is that assessed by a percentage through the Department? It's not assessed on actual receipts.
  - **Haskins:** It's a tax that's imposed. It's 5 percent on the charge for communication services. The amount of money is distributed on a formula based upon the amount of the old series of taxes pre-2007 that each locality had when they imposed the taxes that were replaced.
- **Ragon:** Okay. So that would be considered somewhat different than the local transient occupancy tax in terms of the Department's ability to collect it on the locality's behalf.
  - **Haskins:** Yes.
- **Rives:** Sterling Rives. Mr. Haskins, if I understand federal income tax law correctly—and that's a big *if*—if I were to rent my house out for 15 or more days in a year, the income I receive from renting it out must be reported and it's subject to federal income taxation. Is the same true of state taxation? Is that subject to Virginia income tax?
  - **Haskins:** If your rental income is subject to federal income tax, it's going to be subject to state income tax.
- **Rives:** Assuming that the homeowner is complying with federal and state tax law, that information is then reported to the Department of Taxation at that 15-day threshold.
  - **Haskins:** Whatever the threshold is at the federal level, yes. Virginia is a conformity state. Your starting point on your Virginia income tax return, it's the starting point of your federal adjusted gross income. Any taxable income or loss from your rental activities would flow through the federal and come to Virginia, and we would treat it the same way.
- **Rives:** In fact, they can take deductions for that portion.
  - **Haskins:** It goes on a Schedule E and all that.
- **Rives:** Wouldn't it make sense to have the definition of occasional sales or occasions be the same as the threshold for taxation? So instead of Delegate Peace's hypothetical with three one-month rentals or occasions, if it said 15 days and tie that to the income tax, then all of that information would be provided to the Department. Doesn't that make sense?
  - **Haskins:** It makes sense for certain perspectives. I think the three occasions is part of the Virginia sales tax law, not income tax. I think that's the difference. For the sales tax, if you're here more than 90 days, then there is no sales tax

charged. So I think we're really talking apples and oranges. There aren't many places where the sales tax and the income tax are tied together. It may make it more complicated, but they're each there for their own reasons. If the General Assembly wants to broaden the occasional sale rule to 15 days, that's their will.

- **Rives:** Or at least make the threshold the same. It's just a question, Thank you.
- **Peace:** Thank you, Mr. Rives. Senator Barker.
- **Barker:** My question follows up on what Mr. Rives was just asking. It seems to me we've had a lot of talk about sales and use taxes and transient occupancy taxes, but there's also significant implication for income taxes. If there were not to be registration and the taxes that were collected from the hosting platform were not tied specifically to the individuals renting it, I assume that one of the risks is that there would be no way of knowing necessarily who might be subject to income taxes as a result of operating a facility that participated in this type of platform and that the Commonwealth and obviously the federal government as well, but certainly from our perspective, the Commonwealth would risk losing out on monies that were owed to it because we did not know who potentially owed those taxes.
  - **Haskins:** That's correct, Senator. It would be another tool the IRS or the state could use to verify that people are actually reporting the proper amount of income.
- **Barker:** Thank you.
- **Peace:** Delegate Bulova.
- **Bulova:** Thank you. You had made an interesting statement that compared to where we are now where it's kind of a free for all with respect to who's paying and who isn't, very difficult to track. So you made the statement that with the legislation that was proposed or some iteration, we're probably at a better spot now from a taxation point than where we are currently. Notwithstanding all the other issues aside on the taxation front, maybe that is the case.
  - But I guess the luxury of the process that we're going through here now is that we do have some time to look at what is the legislation that we really want to do. So I know that there is still some consternation out there with respect to accountability. And when asked about how comfortable you felt with the legislation, there was a little hesitancy there. I got the sense that you had thought or could think through what actually would need to be in there that would make you feel very comfortable about the accountability process.
  - And so the question that I have is, have you thought through that or have you been asked to come up with a structure that would actually give you a sense that we were on solid footing with respect to the accountability standpoint?

- **Haskins:** Delegate Bulova, I think from a tax perspective we really like to tie things together. As Senator Barker was saying, that way you could have the income tax tied into it. But we also realize it's a voluntary tax system in Virginia. We don't have but 700 and some employees, so we also realize the limitations. And sometimes you have to give some to get some. So nothing is ever perfect, I think, from a tax perspective on this. Certainly there could be improvements, and from our perspective, on the legislation that was introduced.
- **Bulova:** Mr. Chairman, if I could follow up. I guess we're looking at where do we start from, because eventually somebody's going to have to propose a structure or a framework, and then we're going to negotiate around that. I for one would like to start with a structure that you felt comfortable with. So maybe I could encourage you to come up with a premise or draft legislation, at least on this front, that would set a platform from which to start from rather than necessarily relying on the bill that we had come through the General Assembly this last time.
- **Haskins:** We would be glad to look at it. Anything we do is the tax side of this only. As we've heard this afternoon, there are many other issues.
- **Bulova:** That is completely understood. Thank you.
- **Peace:** Mark, not to get in the weeds, but maybe so much more than constitutional law, you may have mentioned, but you may not have talked about that software program that was proposed as part of that mechanism. Could you illuminate everyone here, because I don't think they were a part of all that discussion? I think that went a long way toward your comfort level in terms of collection and remittance.
- **Haskins:** For the ones who weren't involved in the discussions last December, January, and February, part of our concern on this and the level of information we had is trying to make sure that the local tax goes to the right locality, the 1 percent tax. The Department spends an awful lot of time trying to make sure that people know Richmond County from Richmond City and that Richmond County doesn't get the local tax for Richmond City. Especially out-of-state companies really don't understand Virginia geography and who's where.
  - So we use software where if you register with Virginia, and give us your address, and you tell us you're Henrico County, we go through and refine that address using software to make sure that you really are Henrico County, that you're not in the City of Richmond, that you're not in Chesterfield. You may have a Richmond mailing address, but you could be in one of the other localities.
  - So over the years, we've worked with localities to refine that process. And we use sampling software to do that. What we had discussed during the course of the bill was getting a run from Airbnb of where their hosts were

and running that through very similar software. We could get a comfort level that it's accurate 98 percent or 95 percent so that when they registered and said there are 37 hosts in Hanover and 42 hosts in Virginia Beach that yes, those were accurate. So we had worked with them and felt comfortable that the software they were using was compatible with what we use for the same purpose, to make sure that the local 1 percent tax would go to the right locality.

- **Peace:** Thank you, Mark, for that. Does anyone have questions or comments over here? We have Ms. Hager and then Mayor Rordam with a half dozen questions.
- **Hager:** I'm so glad I get to go before you.
- **Peace:** Amy, go ahead.
- **Hager:** I like how you're talking about how you could see this working. So the only group I feel like we really haven't touched on is those who do list on Airbnb or whatever it may be that are already collecting the taxes. If Airbnb is now going to collect the taxes, what does that now small business owner's tax process look towards? Do they have to just say this money was collected by Airbnb and they don't have to send you the taxes? How does that work?
  - **Haskins:** Assuming that there was legislation or an agreement where Airbnb agreed to collect on behalf of their half, I'm assuming they would let their host know that they are doing that. And any host that's currently registered could unregister with the Department and give that responsibility to Airbnb.
- **Hager:** So they would still have their online reservation systems. They would still be on bedandbreakfast.com and offering their property through other channels. So those channels they would still have to submit the taxes to you. But would there be some line item or some form that they have to fill out that says they did \$2,400 in business on Airbnb last year, so therefore Airbnb should have collected that, and that shouldn't be collected from them.
  - **Haskins:** Again, we didn't get that far in the details of implementation because the bill was quickly moving through the process last year. The bill did not say "Airbnb," it said "hosting platform." It said "may." So our thought was that if you use one of the hosting platforms that comes forward to register with the Department and take on the collection responsibility, that would relieve you as the host of that responsibility. If you were dealing with a host that didn't, then you would still need to maintain. And if you are dealing with multiple hosts and some do and some don't, then if you were ever audited by the Department, we would certainly want to see a breakdown like you mentioned that x-amount of mine went through a host that had taken on the responsibility, and this amount did not go through a host who took on the responsibility.
- **Hager:** Okay, thank you.



- **Peace:** Thank you.
- **Ron Rordam, Mayor of Blacksburg, Virginia Municipal League:** I'm going to speak quick. Thank you. In listening, we're really dealing with two questions. One is the state tax question, and that's if you're domiciled in the state, it's voluntary. But if you have a restaurant in the Town of Blacksburg or in Charlottesville or Staunton, that meals tax is not voluntary. You need to collect it. I want to take the name Airbnb out because they're trying to be good citizens and collect and bring it in. But that can change. You could have a whole other platform next year. How do we as localities end up collecting the taxes that we should, because each one of those rentals is domiciled without communities? That goes back to registration. How do we know? I think we're dealing with two separate issues here.
  - **Haskins:** I agree, and I think that was one of the issues that brought this legislation to this workgroup was how to deal with that issue from the local standpoint. I think we feel comfortable at the state level that in aggregate we would be collecting the right amount. The localities, we're less comfortable. That's why we're here.
- **Peace:** Mr. Mullen.
- **Edward Mullen, Reed Smith:** Mr. Chairman, could I offer just a thought on that. Short-term rentals, this is not a new phenomenon, of course. Obviously we're all very aware of it now because of these online platforms. But I presume that the concern you have has always been a concern, it's just that now you're really much more aware of it.
  - I would see this type of effort and the one that very candidly my client brought forward as sort of proposing a solution has a real opportunity for localities to solve a problem that heretofore has been a very difficult one to solve. And it's not just dealing with hosting platforms my client just started in 2008. I don't think short-term rentals started with them. It's solving a problem that needs to be solved.
- **Rordam:** Thank you, and I do agree with that. I've thought a lot about this. My wife's aunt and uncle have a place in Ashland that they rent every now and then to students. They did that maybe once every three or four years. I think what we're dealing with now from a local standpoint is with the technology and the ability of the platforms, it's a much larger issue than it was 10 years ago. It's not picking on any one idea. Before, it was just kind of out there, now it is prevalent, and we're finding it being a large part of our communities.
- **Peace:** The point is well taken. Mr. Dicks.
- **Chip Dicks, Virginia Association of Realtors:** Mr. Chairman, I'd just like to say I've heard the building registration or property registration idea a number of different times. I've represented the Virginia Association of Realtors for over 25 years, and

we've been opposed to property registration all of that time, as our local government friends know, and I don't think our position on that is going to change. We just need to look at other solutions that divide massive property registration for one kind of short-term rental versus certainly as you said other kinds of rentals and whatnot. I think that's a concept that there would be a lot of problems with. I just wanted to mention that since I heard registration for about the tenth time.

- **Peace:** Thank you, Mr. Dicks. This will be in the minutes of the meeting as well for anyone to read and review. Are there any further questions or comments of Mr. Haskins? We appreciate your public service for the Commonwealth.

- **Haskins:** Thank you, sir.

- **Peace:** Thank you.

## V. Property Owner Association / Property Manager Concerns

- **Peace:** We have one significant, substantive area to cover before we depart, property owner association / property manager concerns. I know that there are also a number of people who are here who are very interested in quality of life in their communities, quiet enjoyment, and other issues regarding their neighborhoods. I know the local governments have raised that consistently. I think we all care and are concerned about those issues.

- So we're very grateful to Pia Trigiani, who is a former president of the State Bar and famed attorney in Northern Virginia who will educate us about these very important subjects having been a part of writing much of the code in these areas. We're very grateful for you to be here.

- **Pia Trigiani, Virginia Association of Community Managers:** That's a nice introduction, Mr. Chair. Well I thank you, and thank you for inviting our participation. We're delighted to be here. We will have a little constitutional law for you. I will not talk tax. Mr. Haskins, I hate taxes.

- Our presentation is designed to give you an introduction to community associations, common interest community associations. Other of the Housing Commission are very familiar with it. In fact, the Housing Commission is the source of much of the legislation affecting community associations. So a general discussion of the framework of these associations and also some information about the breadth and scope of their presence in Virginia, which is considered to some extent not only the mother of presidents, but the mother of community associations. I know that's hard to believe, but it's true. And also I'll discuss a little bit about what we have heard from community members about the issue of rentals, rentals overall—short-term, long-term—are an issue in community associations. So it's both with respect to long-term rentals, as Chip knows, and short-term rentals.

- When we talk about a community association, we talk about basically three or four different types of community associations. There are planned communities, which are also known as property owners' associations or homeowners associations. You can also hear them called proprietary or conservancy. In Reston, the small ones are called clusters.
- And we have condominiums. Virginia is the first state to have adopted a second-generation statute in 1974. It was a recommendation of the Housing Commission at that time. It was preceded by a horizontal property act, which was enacted in 1972.
- We have cooperatives, which there aren't many in Virginia. I would say in 1982 when the statute was adopted, it had a chilling effect on the adoption and creation of cooperatives. That's more of a New York thing. And time-shares are also considered community associations, but I'm going to focus on planned communities and condominiums.
- Here are some of the characteristics of a typical community association. Automatic members is one. When you buy a property that's in a community association, you're a member of that association automatically and by mandate. The documents for a community association—and I'm going to talk a little bit about those—create a contractual relationship, a covenant, a contract. And then you have individual property ownership and ownership of common areas or common elements, which we'll talk about in a minute. And there is also mandatory assessment.
- These are some of the distinctions. In a planned community—and this is the big one—it's about the common area, who owns it. In a planned community, it's the association, which is typically a nonstock corporation, although they can be LLCs. I think some of the more modern ones are looking at that form. But it is owned by that association. Virginia has one of the largest in the country—Reston. Reston is not a town; Reston is a homeowners association. There are 10,000-plus homes and commercial uses.
- By the way, they don't have to be residential. They can be mixed-use and they can be all commercial. An example of that is where the Redskins practice every week when they're not here in Richmond. That is a property owners' association.
- With condominiums, the owners own the common elements. They own fee-simple title—sorry to go all legal on you—to their unit, however that's defined. And it can be defined lots of different ways. And then they have an undivided interest in the common elements. That means it can't be separated. It's undivided. And it's based on however the developer decided to do that. Sometimes it's square footage; sometimes it's pro-rata share; sometimes it's fractional. It just depends.

- And then you have your cooperatives, and I only share that because it's interesting. In a cooperative, the association owns everything—units, apartments, and the common areas. It's a corporation. There are some interesting tax issues there, Mr. Haskins.
- There are three functions of a community association. They're a business. The legislature has also considered them a government. We prefer to consider them businesses. They're private entities; they're not public. When I speak to some of the other characteristics later on, you'll understand why we don't want to be considered a government. But there are governance aspects to a community association.
- I was at a meeting last night until midnight with a board in Leesburg. They were governing. They were grappling with an issue about whether to expand their common facilities. It sounds a lot like what we hear in the room today, same kinds of policy questions and issues of revenue and such.
- The third thing and the thing I'd like to emphasize—and I think we've heard it already today—is they create community. Developers create legacies with the communities that they develop. It's all about what's in a given neighborhood. Create a neighborhood. That's what these communities are designed to do is to create community and shared business, shared use.
- Here are some statistics. This slide and in the materials that we gave you, there is a more extensive summary produced by Community Associations Institute, which is a 35-, 40-year-old organization that is an education collaboration among community associations across the country. They've been studying this issue for a long time.
- You'll see in 1970 that .7 million housing units across the country were in a community association. If you go down to 2015, it's 26.2 million and 68 million residents in a community association across the country.
- That's significant. It's significant because most new housing starts in the United States of America are in a community association of one form or another. Why? Community associations take burdens off of localities, serious burdens such as infrastructure maintenance, and services to homeowners. I grew up in Big Stone Gap, as you've already heard. We had a town pool. Big Stone Gap doesn't need a town pool anymore if they create a homeowners association because the homeowners association has the pool. That's what happens.
- If it's gated, some of them are, the roads are maintained by the association. It takes serious burdens not only off our local government but our state government. At the same time, it adds to the tax base and the tax value. I live in Old Town Alexandria. I moved five blocks. In my home before, the city picked up my trash. I moved five blocks. It looks almost like it's a little newer. The trash, I pay an extra fee to my association, which picks up the trash. So those

kinds of services, it's important to know what value community associations bring.

- By the numbers, again, in the United States CAI estimates between 342,000 to 344,000 in Virginia. And I think these numbers are low. Eighty-five hundred community associations, at one point, 710 million residents live in a community association. I mentioned since 1970, one in every three new residential homes built in the United States is in a community association. I think it's closer to all.
- They range in size from two-unit condominiums to large-scale planned communities. Delegate Knight, in your district, there are probably hundreds of two-unit condos. Back in the 1980s, Tom Ammons, who served on the bench, created a host of these two-unit condos where it was an existing building and they divided them into two. Again, Virginia has one of the largest, one of the three largest in the country with Reston. But Lake Ridge is another with 7,600 homes. Broadlands in Loudon County, that full build-out will be at 8,000 homes. So they range in all sizes. We also see 100 units, 300 units, but they're all different. The largest condominium is in Alexandria, and it's called Park Fairfax. It's over 1,600 units and the largest conversion on the East Coast.
- Community associations have all kinds of architectural styles—townhome, garden style, single-family homes. There are some condominiums that are even land condominiums. I think there's one down in your district, too, Delegate Knight. The beauty of the laws that we've adopted in Virginia is that it gives the developer great flexibility to develop land into a workable project.
- This is some important information about who lives in these community associations. They're not all whacky, but some of them are. Some of them are probably in the room too. I see over there and I know you live in a condo.
- The Research Foundation of Community Associations has done a number of studies. They started out with a poll by Gallup, but have followed it up every five years or so with polls by Zogby. They've done about five of them or six of them. They use the same questions in every poll because they're trying to gauge satisfaction of homeowners who live in these community associations. The most recent one I believe was 2015. What they found was by large majorities most residents rate their overall community association as positive.
- What they say is that the association board members serve the best interests of their communities and their managers provide valuable support to that. And then there's this point: Residents support the rules because the rules protect and enhance property values. That's the connection to the conversation today.
- Some of the statutes that apply are in the federal law. The Americans with Disabilities Act is one. I will talk a little bit more about that because that's one of the challenges presented by short-term rentals to community associations. The Fair Housing laws, both state and federal. The Federal Flag Act. We've probably

seen some of those battles. And then the Telecommunications Act of 1996. Of course common law applies, not so much to the Condominium Act, because condominiums are statutory fiction, purely created by the statute. And then there is local ordinance. That's the other connection or nexus today is that local ordinance.

- The state statutes include the Horizontal Property Act, the Condominium Act, the Property Owners' Association Act, the Real Estate Cooperative Act, the Time-share Act, and then the Nonstock Corporation Act. And in 2008, the General Assembly adopted regulation of community associations primarily focused on associations and community managers. Those statutes address that regulation to some extent.
- What we've learned more and more is that the focus and attention has to be on these documents. The documents are the root source, if you will, of the authority of these community associations and limit what these associations can do. They are critical. Some are good and some are really, really bad. That's what makes this interesting. And I will say that over time we've learned a lot about what good documents should say.
- And because this is a relatively new form of ownership, we're really talking the 70s—I think it's relatively new because of my age; some of you may not agree with that. Those courts haven't really dealt with a lot of issues dealing with associations. They're growing though, and what we're seeing the trend of the cases is that the courts are very narrowly construing authority of associations and the restrictive covenants established in these documents.
- In a condominium, the documents you have are called the *condominium instruments*. It's always a declaration or in a horizontal property regime it's called a *master deed*. And then there are some exhibits called bylaws, a common element interest table, plats, and plans. These are recorded. The condominium instruments are recorded. Why is that important? Real estate nerds like me will tell you it's in the chain of title. That's where the contract is created.
- Associations then adopt rules and regulations and resolutions of the board, which are really more policy or administrative. Those resolutions and rules and regulations have to be founded on authority in those recorded documents, the condominium instruments.
- In a property owners association, a planned community, you have a declaration. Sometimes you see it called a deed, declaration of covenants, conditions, and restrictions. CC&Rs you hear it called. That declaration again creates the contract. The contract, by the way, is from the association to the owners, the owners to the association, and the owners to each other. That's important.
- They are nonstock corporations typically, so they have articles of incorporation and bylaws. Bylaws in the hierarchy in an HOA planned community are the least

important. In a condo, they're the most important. So a little reversed. HOAs typically have architectural guidelines. The talisman, if you will, of a community association is you can't build that there, you can't have it there; we don't want that fence, no fence. And there are rules and regulations and resolutions.

- Here is where we go to the Constitution, Mark, I'm so excited. Our Bill of Rights actually is unique to some extent in limiting the authority of our General Assembly to affect existing contracts. What our Bill of Rights says is right up there, that the General Assembly shall not pass any law impairing the obligation of contracts.
- When we look at legislation in working with Commission members and with legislators on legislation, we go back to the documents. When we're looking at a piece of legislation, we say you're stepping over this part of the Bill of Rights. You can abrogate a contract. We do that with fair housing law. The difference is there's a federal law. Federal law can come in and preempt. State law, based on this, cannot. Our Virginia Fair Housing Law is substantially equivalent to the federal law. You can go there. But this is an important concept, and has been, and it's been why Virginia law in this area has been very reasonable and well-reasoned in its adoption.
- When the bill was introduced, we went to the patrons and we said we need to recognize that constitutional protection. This is the language that was added to the bill which basically says just that, that any contract is preserved. This legislation does not in any way intend to jump over, abrogate, eliminate, change, or modify a contract or the recorded documents of a condominium or a homeowners association or planned community cluster or whatever you would like to call it. That's important, and we appreciate very much that recognition and that continuing recognition of the legislature on that important point.
- One of the things that these recorded documents contain are leasing restrictions—or not. Leasing restrictions have become a hot topic for lots of reasons, not just because of short-term rentals. There have been issues with long-term rentals as well and have been for quite some time in developing.
- The leasing restrictions have to be established in the documents, the recorded documents. For a condominium, it's going to either be the declaration or the bylaws. More often it's the bylaws. In the planned community, it's in the declaration. Why? A limitation on an owner's right to use their property, convey their property—a lease is a conveyance—has to be established in the title, these documents in the title. Those leasing restrictions are in the recorded documents. Not always, but a lot of times. They vary substantially. Documents are all over the place. Where there is a question or concern is the reliance on local ordinance. To some extent, but not a whole lot, leasing restrictions can be enhanced by rule, but it has to be based on the authority in the recorded document. It can't go beyond. For example, if the recorded documents say that you can have a minimum lease of six months—and that's a typical restriction, by the way—you

can't then say it'll be three months, by rule. You're stuck—I hate to say stuck, but you're bound by what's in the recorded documents.

- In the materials that we provided, example 1 under the condominium and the planned community are what I would call comprehensive restrictions. Typically, the restriction in a condominium context comes out of secondary mortgage market lending requirements. In most condominiums, you will see more often leasing restrictions, less over in a planned community. I went and looked at this.
- We keep our client binders, and I pulled them off the shelves and went looking. Almost all have a six-month minimum lease term. Why, because Fannie Mae, Freddie Mac, FHA, VHDA, all made a qualitative decision that we're not lending, guaranteeing loans, certifying loans in communities where there's a transient population. Why? Not proven, but the theory is that homeownership creates more value than short-term, mid-term, long-term rental. With rentals, you have people going in and out. It's changing. That lack of community is created and there is a concern about that.
- All of the federal lending agencies have always had that requirement. And the condominium development has been much more regulated and controlled, so in a condominium you will see documents, and in a document you will see leasing restrictions. The Horizontal Property Act regime, I pulled one for a community here in Richmond. They don't have it. So it's in the documents.
- In a homeowners association, a planned community, you often do see leasing restrictions, too. But FHA really only deals with condominiums, and the other secondary mortgage market ones are pretty much out of the market. But what you will see are some that do. A property owners association regulates short-term and long-term leasing put in a minimum lease term.
- What you do see in planned community documents more often is you can't have multiple tenants at the same time. So it would kind of cure your problem, Mr. Mayor. You can't have a frat house or multiple tenants, unless they're roommates. There is some language that goes back and forth. Most documents in a property owners association rely on residential use and rely on local ordinance to define what the residential use means. That's where we find it in most cases.
- What you have in that second handout that we provided are some samples of what we see in community associations. It's not complete and comprehensive, but it's close.
- I want to say to Jillian, where we have been successful on a national level, I'm told, is that when we've had issues in a community association, we have a good rapport with Airbnb and go to you and explain the problem. We find that the listing is removed. There is some cone activity which is positive and good in that respect.



- In a community association, the challenge for communities is the sense of community. Again, the neighborhood thing that we've talked about before. The second one is harder—purchaser and homeowner expectations. When someone buys in a neighborhood, they oftentimes don't expect that next door something different is going to be happening than what they will see in their home. By the way, this extends to next week's workgroup having to do with the conduct of businesses and home businesses. Some homeowners are concerned that really this short-term rental is the conduct of a business. So how does that interplay with the residential character and nature of community, which is the third point.
- These associations often rely upon local ordinance and zoning. And in fact, these associations are a creature of local government. They're created to take burdens off of the local governments with respect to infrastructure and those kinds of things, but also to regulate conduct and appearance. In many respects, the architectural restrictions and the conduct rules are nothing more than local zoning. I hate to say that because we're not governments. We don't have immunity. There's lots of liability for these community associations. But there is that concern about the ability to rely upon local ordinance and zoning.
- The other thing I think was mentioned earlier about full time versus periodic hosting. Some communities have experienced event houses or where the owner is never there. I think the legislation addresses that in some measure, but that's a concern for community associations. There is also a sense that if you're doing short-term rentals, the long-term rentals go away. And we like long-term rentals. The short ones in a community association raise some of these questions we've talked about.
- Some other challenges are compliance with restrictive covenants and association rules. We worked over the last couple of sessions with the realtors to address rules and making sure that tenants are made aware of rules. Arguably this would apply on a short-term rental situation, too. Making sure that when a person comes into a community association they know what the rules are.
- Some of the real-world issues are the leasing restrictions again, commercial issues, and behavioral issues. Parking is big, and then there's noise and trash. Smoking is becoming a big issue in these communities. And then the other ones are community standards, architectural standards, and maintenance, so on and so forth.
- The concern is that there's financial impact on administration. Maintenance and repair costs go up because you're dealing with people who aren't owners, who aren't invested in the community, who may not be as concerned that when they walk down the hall they take a nick out of a wall or they don't take care of the front yard. And believe me, front yards are big. At the meeting I attended last night, they had cited somebody for some weeding, and the guy just put some mulch over it and the weeds were coming up through the mulch. This one guy

was ready to go out and strangle him. That's what we get, Mrs. Kravitz every day. The people that watch *Bewitched* know who Mrs. Kravitz was.

- Owner conflict is a big issue. The expectation that you're going to live in a single-family community and it turns into something that's less than that. And then there's the security issue, which I think has already been discussed. There are questions of security.
- Some other issues are impact on property values, the added burden on common facilities, the owner versus short-term tenant perspective; we've already talked about that. This next one could be big, the Americans with Disabilities Act. Residential communities are not considered places of public accommodation under this federal statute. Sometimes they are, they become places of public accommodation if there are commercial properties, a doctor's office, a lawyer's office, a psychiatrist's office, something like that in the community. Or the community makes the common areas available to the public, like a river walk or a plaza or the pool, swim teams, when you bring in non-members. So there's a huge concern that when you have non-owners and there's a constant access by someone who's not an owner that it may trigger the Americans with Disabilities Act. Why is that significant? It's significant because it would require the association in some instances to make major modifications to common areas to accommodate someone with a disability. So it could be big.
- And then you have the Fair Housing Law. There is a lot of concern about fair housing in community associations. Community associations are considered housing providers, and they must comply with fair housing. So when you introduce non-owners and it applies to anyone who would be accommodated or live, the association has to make sure that there is compliance with fair housing laws.
- The mortgage finance issue is a big one. We don't want you to be too restrictive on rental, but we want you to be restrictive on rental. And this is a big challenge for community associations and some of the lending agencies don't like rentals at all.
- Some solutions or some approaches to addressing the challenges that we've talked about are more rigorous compliance. That's pretty self-serving, but we have to enforce the rules. And if there are rules, we enforce them more rigorously. The next one is amend the governing documents. The association, the owners can choose to amend their governing documents. There are some challenges to that. Amendment thresholds are typically high and it's costly. There was a recent Virginia Supreme Court case on leasing restrictions, oddly enough. An owner challenged leasing restrictions because they bought the place knowing that they wanted to lease it. The association had adopted an amendment to the leasing restrictions. The process and procedure of amending has been called into question by the recent Supreme Court case, which we think can be cured legislatively.

- That's all I have. I'm glad to answer any questions or just sit down and be quiet. I'm glad to note that Senator Stanley has left the building.
- **Peace:** He looked like Elvis when he left. I guess I wanted to say something. We can take other questions and comments now or wait until Brian presents. I'm not sure what the workgroup's pleasure is.
  - You mentioned a couple of terms—retaining the character of community, preserving community standards. In 2016, that has a different connotation than it did in 1950. It's true that Virginia does not have a very proud history where certain more difficult things were put into deeds or put into covenants stating that black people couldn't own in certain neighborhoods. Maybe this is a Pia question and not a representative question. In light of preserving community standards and retaining community character, how much have you been able to discern is a concern about something different coming into the house next to me and not something that I'm used to where I've chosen to buy in a certain neighborhood knowing that fair housing realtor standards prohibit such things. I hope that we as Virginians would not endorse a system of laws or rules or otherwise allow that type of discrimination to continue.
    - **Trigiani:** Point well taken. Those restrictive covenants which were in many deeds in the mid-50s, -60s, probably up until the 70s, are void as against public policy. First of all, they don't exist as far as I'm concerned. One of the things that the legislature did in enacting the regulatory scheme affecting community associations was to require fair housing training for managers of community associations, just like realtors, both leasing and sales, brokers and agents, have to have fair housing training every two years.
    - We have seen an uptick in fair housing complaints, but they are not typically race related. They're more handicap related. The nature of them is typically having to do with parking, one of which went to the Virginia Supreme Court last year. The association was found not to have violated. There was a misunderstanding about who owns common elements and that kind of thing. The association was not penalized in that case. There are things like pesticide application. If chemicals are being used, chemical sensitivity. So that's where we've seen some uptick.
    - I'm pleased to say that of the cases that I've seen on fair housing in my own practice, they're de minimis on the race front, so that's good.
    - I think you are absolutely correct that this is a different day. It's a different kind of world we live in. I would say that I think there are many who support this kind of use. It's when it is abused, just like anything else, it's overdone, and it changes the nature of the community. I haven't heard a community that's upset when it's a one-off, an occasional, a periodic. It's when it's turned into a business that there's a concern. And then there are

those occasions when you just get a bad actor, and you get them. There are bad actors everywhere.

- I do think this, though, that the expectations of someone who buys in a covenant-restricted community is different. As the numbers show from the studies that have been done and the polling that's been done by CAI, there is very much an interest in rules. And it's because the association becomes the sword and the shield against their neighbor.
- I have personal experience. My next-door neighbor went to the association. I think I had some peeling paint on the fourth story of a tall townhouse. I couldn't see it. The guy is very particular. I got called by my own client to the board of directors to fix something. And you know what, I bought that. I bought into it, and I bought into that level of scrutiny, and I have to deal with it. But that's my expectation.
- **Peace:** I appreciate your comment. I've certainly experienced in my own community concerns that Syrian refugees are going to now come and stay. My point is as we move forward to try to forge consensus and find a bill that would work for all Virginians, that we're not operating based on fear that a community's character will change when someone uses Airbnb and they look different, because that's not acceptable. Mr. Mullen?
  - **Trigiani:** We agree wholeheartedly.
- **Mullen:** Thank you, Mr. Chairman. Thank you, Pia, very much for your presentation. We were very pleased to work with you during session. As you know and as Mr. Peace knows, I didn't think that the bill as it was introduced touched on contracts, but we were very pleased to add the language that you suggested making clear that we weren't.
  - You talked about a couple of the concerns that could come up if the documents didn't contain certain restrictions. But would you agree the bill as it came out of the Senate or as it ended up and as it's before this body protects both the contracts and generally applicable laws like nuisance and stuff like that? In other words, it doesn't trump those, so a nuisance complaint, a generally applicable ordinance like a nuisance or something like that, in addition to governing documents of homeowners associations and other such things.
    - **Trigiani:** I don't read it that way. I don't think it affects a contract where there's a nuisance provision in the documents. If the documents are silent, I don't know the answer to that.
- **Mullen:** Okay.
  - **Trigiani:** I haven't studied what it does to local—
- **Mullen:** That's a different section, so that's fair enough.

- **Peace:** Delegate Bulova and then Senator Barker.
- **Bulova:** I think this might be following up from what Edward was talking about. So really kind of getting down to it, do you feel that the language that was included in the bill from this last session is adequate to do what you want it to do or are there still tweaks that need to be made to it to address issues that might have come up between that point and now?
  - **Trigiani:** We agree with the language and like the language as it affects those communities that have restrictive covenants that deal with leasing. It doesn't impact or affect or help those that don't and that rely upon local ordinance. We have heard since the bill that there's a question.
- **Bulova:** So I have a quick follow-up on that. I think you went over a whole range of different ways that declarations may or may not address leasing situations. By the way, I actually looked up the new best practices guidance, and it actually does have a point in there that says you should address leasing. So that's really good looking forward.
  - If you had to kind of give a professional best guess, how many declarations are really solid with respect to yes, you have carte blanche dealing with leasing versus ones that have a gray area where you might actually have a problem versus that are just completely silent on it, which throws them into any other home or civic association like the one that I belong to.
  - The issues that we're dealing with I think are universal. Quite frankly, I think we need to address them regardless of whether you are in an HOA or not. So break it down for me as far as HOAs are concerned, who's got problems and who's covered.
    - **Trigiani:** I would say that for more condominiums, for the most it's addressed in the documents. I'd say for property owners associations, planned communities, for the most part it is not.
- **Bulova:** It is not. Okay, thank you.
  - **Trigiani:** And the civic associations it definitely is not.
- **Barker:** Thank you, Mr. Chairman. Pia, I have a quick question. You talked about the FHA and other mortgage entities limiting and saying we're not going to provide mortgage assistance in communities that have short-term leasing. Obviously, there are communities throughout the country who have that now, and it doesn't seem to be going away. How do you see that conflict being resolved, and is it something that we should look at in any legislation we deal with?
  - **Trigiani:** I have two points. The only secondary mortgage market lending agency that's really in play now is FHA. They certify or address loans in

condominiums only. So that's why I think you see the restrictions in condominium documents more often.

- In property owners associations, what you have is lenders modeling their underwriting guidelines after the secondary mortgage market lending agencies. There's no requirement that they follow them, but they model them. Every community association manager gets a mortgagee questionnaire for every property. They're asked questions. And one of the questions is, are there leasing restrictions. I don't know if that means that they won't lend in that community, but what we do see is that the conventional loans, even the non-conventional loans, are modeling them after the secondary mortgage market lending agency requirements. They used to exist, don't exist, kinda sorta still exist.
- **Barker:** The latter part of the question was basically do you think this is an issue we need to look at when drafting legislation or not?
  - **Trigiani:** Do I think that the legislation should address what is a residential use versus a short-term or home occupation? I think it could have an impact, yes.
- **Dicks:** I have just one question, Pia. You and I have had this discussion before.
  - **Trigiani:** You mean argument.
- **Dicks:** Argument, that's right. We only argue, right? If the governing documents do not have leasing restrictions, would you comment on how the governing documents can be changed or to what extent they can be changed?
  - **Trigiani:** The Condominium Act is very clear and very easy. Since 1974, it is a written ratification and consent by owners of units to which 66 and two-thirds percent of the common element interest appertain. So 66 and two-thirds, basically, of ownership interest. A written document, not a vote.
  - For property owners associations, it's like the stars in the sky; there are lots of different ways to do it. That recent Supreme Court case calls into question what it is, which is why we need some legislation to address it. But basically, it can be by a vote, it can be by a written document, or it can be completely silent. The Property Owners' Association Act addresses the completely silent and allows a process. But that's where the court case has kind of muddied the waters, so that needs to be clarified.
  - But it's not easy to amend the documents. It's almost always a super majority, 66 and two-thirds. Sometimes it's 80; sometimes it's 75. It just depends on what the developer and the developer's lawyer who was drafting the documents did.
  - In more modern documents it's a lower threshold, and it's by a vote. Older documents, it's all over the place. We've learned how to draft these documents a little bit better.

- **Peace:** Mr. Dicks.
- **Dicks:** The Chairman has had legislation the last two years that you and I had worked on that deal with rentals, so the philosophy of an owner of a property being able to rent their property and the association is not a party to the landlord/tenant relationship. Would you agree that the legislation that the Chairman carried the last two years would cover any kind of leasing relationship between the owner and the tenant?
  - **Trigiani:** I think it would have to. I would agree with you. And that legislation would require the landlord to provide a copy of the rules to the tenant. The tenant would have to acknowledge those rules. The landlord would have to provide to the association the name of the occupants, and their vehicle information, and the name of their authorized agent. Did I miss anything?
- **Dicks:** No, I think you got it down. My point is that short-term rentals would be treated just like long-term rentals where the association does not have an anti-leasing provision or a restricted leasing provision in their governing documents.
- **Peace:** So you're saying that's supplementary to the language that was in the bill that Pia spoke to where there are covenants against such activity or prohibitions. When silent, that springs.
- **Dicks:** Right. As you know, the purpose of your legislation in that respect was to basically say that in the absence of a provision in the governing document restricting a landlord/tenant relationship from the owner being able to rent to a tenant, that that was between the owner and the tenant, and the association did not have a veto right, and they couldn't have a meeting of the board or whatever and just say we're going to prohibit leasing. So respecting the constitutional provision, it does allow and respect the private property rights of the owner to rent. And it would cover long-term rentals or short-term rentals.
- **Peace:** Thank you, Mr. Dicks.
  - **Trigiani:** Mr. Chairman, one other thought occurred to me as Chip was asking the question that really is an issue for Mr. Bradshaw to address when he addresses the insurance coverage. In a community association, there are different insurance requirements, and it occurs more in a condominium with the master policies of insurance and general liability coverage. But it also would apply in a homeowners association. I think that should be addressed when the insurance issue is considered. It's a little bit of a different issue, but it's related to the insurance question.
- **Peace:** We'll make note of that and make sure that that's developed further. At this point, I'm going to digress from the agenda briefly. We had had several legislative inquiries of the Commission and the workgroup for opportunities for comment. Delegate Krizek is here with some individuals who would like to address the workgroup. They've been waiting very patiently. However, we have a more senior

member of the assembly here who would like to also address the group, Senator Norment. I've been passed a note. I don't know if he's still here. We would like to hear from him. He's asked for an opportunity to speak, so we want to give that to him. I know he has to leave. Then we'll get back on schedule, and then Delegate Krizek if it's okay with you. I appreciate that. Is he here? Okay. I know he had to leave at four, but it's not quite four yet, so I was hoping we could get him. Okay, Brian.

- **Brian Gordon, *Apartment & Office Building Association of Metro Washington*:**  
Good afternoon Mr. Chairman, members of the workgroup. My name is Brian Gordon. I'm here today representing the Virginia Apartment and Management Association and the Apartment & Office Building Association of Metropolitan Washington. Our member companies own and manage multi-family rental housing comprising a collective portfolio of roughly 207,000 apartment units throughout Virginia. We very much thank you for your time this afternoon to present to you the interests of our industry in this issue. I benefit to a degree from my position on the agenda behind Pia, as I'm able to say ditto to a lot of what she said. We have a very similar perspective on the world, so I will try not to cover similar ground and try to keep my comments today mercifully brief, if I can.
  - To boil it down, our industry's interests in this issue are twofold. First and foremost, we as property owners want to maintain, protect, and preserve the authority of property owners to regulate subleasing activity through the lease agreement document. And to reference back to Pia's slide with regard to the constitutional protection of contracts here in Virginia, I don't believe that's actually a change that has been part of the discussions on legislation here in Virginia. But there are several jurisdictions across the country that have adopted provisions that either restrict or outright prohibit the ability of property owners to prevent subleasing by their tenants for their units.
  - We have a vested interest in, firstly, knowing who is in our buildings and on our properties. But beyond that and not dissimilar to the interests and concerns that were presented last month by the local governments, we have an interest in being able to protect the safety and the surrounding community and our other tenants. We want to be able to protect them from potential nuisance violations and things of that sort on our property. That is very much an interest of our industry to maintain that existing authority.
  - Secondly, we do have some members who have expressed interest in utilizing platforms such as Airbnb to engage in short-term residential leases on a very limited basis to bring in revenue on an otherwise non-performing asset. So where we have a vacant unit, nobody's in there, and we're not getting in any return on that investment, our members would like the ability to, again, on a very limited basis use short-term residential lodging to help provide that return on investment.
  - We do understand some of the concerns that were presented by the hospitality industry at our last meeting with regard to properties operating as legal hotels. We're certainly understanding of that, and I'm aware that there may be some bad



actors out there that are engaging in that type of business model. But from our members' perspective, that's certainly not the intent. And my understanding of the financing structure for larger apartment communities, our investors aren't prepared to accept that type of a liquidity in our business model. We're not looking to completely reinvent our business model and clear out longer-term rental properties to operate them completely as Airbnb properties.

- In some of my off-line conversations with different stakeholder groups, I do believe that there's a path forward and there's a way to put restrictions in place that would help prevent that sort of circumstance from arising. And certainly as this workgroup proceeds through the summer with its work, I think we'll be able to come to some sort of an agreement on what that might look like. Just as an example, I think it makes a lot of sense that if you are operating as an apartment community, a rental property, that all units would have to remain available under the terms of the Virginia Residential Landlord and Tenant Act, which is a minimum month-to-month lease. I think that would go a long way towards eliminating that illegal hotel business model. But certainly there are other things that I think can be discussed.
- Some of the solutions I think to the issues that we've all discussed may already be in place within different areas of the Code, and there are certainly different places that we can look. The Virginia Housing Commission in the last couple of years has looked at regulations on extended-stay motels that I think might provide a good guide for where we need to go as a workgroup as well. There are also existing regulations in terms of licensure and who may rank property. So I think those are some things that we can look to going forward.
- That is essentially the interest of our industry. Perhaps I'm a bit of an optimist, but I do believe that there's a way within this process. I'm a big believer in the Virginia Housing Commission, having worked with this group over the last several years on a number of different issues. And I've seen very difficult issues where all of the stakeholders have come together to be able to put something forward that at the end of the day resolves everybody's concerns. That's what we look forward to doing this year.
- **Peace:** Thank you, Brian, especially for those last comments. Are there questions of Mr. Gordon or comments from the workgroup on his presentation? Does everyone understand what an illegal hotel is in the pejorative sense? We all kind of know what we're talking about? Mr. Rives.
- **Rives:** Thank you, Mr. Chairman. I would appreciate it if you could explain again your idea for avoiding illegal hotels by requiring that the apartments remain available for leasing on a month-to-month basis.
  - **Gordon:** This is nothing that we've fleshed out or actually drawn up any legal language on. But I think conceptually the idea would be that if you operate an apartment building, which calls under the Virginia Residential Landlord and

Tenant Act, that if you were to engage in short-term lodging that those units would have to simultaneously remain available to be rented under the terms of the Virginia Residential Landlord and Tenant Act, which is a minimum month-to-month lease. That would be to say if you have prospective renter who wants to come in for a longer term lease that that unit would not be sort of reserved for short-term lodging.

- **Rives:** I think I understand the concept. Would you need to have some requirement that the units continue to be advertised as available? Would you have to have some restrictions on what the rent would be? Not that any of your members would do this, but it's conceivable that they would no longer advertise the units and they'd set the rent so high that they wouldn't get the month-to-month lease and they could continue to put them out for short-term rentals.
  - **Gordon:** I don't think that the concept of setting what the rent may be is something that we had contemplated, but I think that's certainly up for discussion.
- **Rives:** Thank you.
- **Peace:** Yes, Mr. Dicks.
- **Dicks:** In answer to Mr. Rives question. Today, if I'm an apartment owner and want to lease an apartment, I can lease a corporate apartment, and somebody can come and stay for two weeks, three weeks, whatever. But as the hotel/motel people know around the table that I have to pay hotel/motel tax because I'm renting for less than 30 days. So there's a provision already in law that addresses that situation. We'd have to flesh out, as Brian's saying, that language and see if that language really works. But I think there's a willingness to take a look at that.
- **Peace:** Thank you. Any others? Hearing none, thank you Mr. Gordon. I appreciate you being here. Thank you for participating in the workgroup as well.

## VI. Legislative Comment

- **Peace:** Next on our agenda is Legislative Comment. Delegate Krizek had asked to be here, and I had asked staff to include a letter that you had forwarded me in your packet. We have it on the table for anybody who wants to have it. Paul, thank you for being here. I appreciate your patience. And also thank you for bringing one of your constituents, I believe, all the way here to Richmond.
- **Delegate Paul Krizek:** Thank you, Mr. Chairman, members of the working group. My name is Paul Krizek. I'm the delegate from the 44th, and that's the Mount Vernon and Lee portions of Fairfax County. You probably all know this is my first year, and so this is still a learning environment for me. And I do appreciate this.

- This is the first time I'm been down here during the off season. I want to thank you also for giving us some time. I have my constituent, as you mentioned, Mike Rioux, who's the Civic Association President of Mason Hills Association. And former Senator Toddy Puller, that's where she lives. It's just down the street from my neighborhood, which is the Holland Hills Civic Association. There are a number of people also who've come down from Mason Hill today and also from other civic associations around the Commonwealth, and I want to thank them all for coming out. We're here to represent you, and hopefully Mike and I will be able to catch some of the most important talking points that you have here. And I think it's important that we hear it.
- From Pia, we learned about the HOA. We kind of got HOA 101. Actually, it was more of an advanced class. I think that was 202, yes. But what we don't have is we really haven't heard from those civic associations that don't have those powers. And so I think that's what's really important that Mike's here. I'm thankful that the Chairman's given me a chance to let him talk and give you some real life experience of how short-term rentals, and Airbnb in this case, can have a negative impact, unfortunately, on the fabric of community here in the Commonwealth.
- I'm not adverse or against folks being able to rent out rooms in their homes; I think that's important. I think people should be able to do what they want with their property within certain circumstances. And I do think it's important for people to have that extra income, that opportunity to make some income. I thought that the point of Airbnb from the very beginning was that opportunity to use those rooms that aren't being used.
- In fact, my family, my wife and my daughter, we have my parents' old place, and we have a couple of extra rooms. We're going to bring our parents back, and they're living in a condominium right now. We're going to bring them back, but we're going to create our own little condominium rules before they move back in with us. We're looking forward to having them back in the house. We're going to have it all written down. I might need a lawyer.
- So our communities were built in the 60s and the 70s, and they have small roads. Some of them only have sidewalks on one side. Some of them have no sidewalks. And some of the older parts of my neighborhood, we don't have sidewalks. So we don't really have that kind of infrastructure to handle a lot of cars coming down the streets. A lot of these are courts; they're dead ends, essentially. So there's nowhere to park a lot of cars. You can't block the mailbox. If you block the mailbox, the mailman will not deliver. The next day you may get a note saying you shouldn't have blocked your mailbox yesterday. That's how it is in our neighborhood.
- When you do have a B&B in a community, they're using your driveways to back up into them. They're turning around in them. There's a lot going on that's kind of disruptive. There's my trash to pick up and things like that.

- And I see that you guys are working really hard on this, and I know that Chairman Peace is a good task master on that in making sure that what comes out of this working group is going to be very good legislation, and it's going to be fair for everybody and work well. I'm very happy to be here today and listen to so much good testimony and great questions as well. I feel very confident that you will come up with something that I'll support next year. I look forward to that whole process. And I'll probably come down again and listen some more.

## VII. Public Comment

- **Krizek:** But without further ado, let me introduce Mike Rioux, who is an amazing guy. He's lived in the community a long time. He's taken a leadership role on many issues in Mount Vernon, and he is our Mason Hill Civic Association president. Thank you very much for coming down.
- **Peace:** Thank you, sir, we appreciate you being here.
- **Mike Rioux, Mount Vernon Mason Hill Civic Association:** Thanks for the opportunity. In difference to Pia, we live in a civic association. We don't have any rules; we can't enforce anything. Everything is done by volunteerism. We have 112 homes in our community. We live about midway between Old Town Alexandria and the Mount Vernon Estate. That is a factor because those are very important tourist attractions. And right across the river from where we live is the National Harbor. And if you're not familiar with what's going on there, they're going to put a casino in there.
  - We have a home in Mason Hill that's been an Airbnb listing for about 12 months. It's a second home; it's not a primary residence. It has six bedrooms in it. They rent the Airbnb home to families. I've seen as many as six families walk into the home for about \$450 a day. They have a minimum of two days of lease during non-holiday times, and seven minimum days during holidays. If you look at the site, it looks like a hotel advertisement.
  - Our issues are arm's length. We have safety issues. We have security issues. They have cameras pointing at my house—I happen to live next door to it—across the street at my neighbors' homes. This is the kind of a neighborhood where kids grew up playing in the streets. They don't do that anymore. We have concerns about emergency service vehicle access because out of all the roads in our small community, five of them are on cul-de-sacs. So in this particular case, it's fairly close to the end of a cul-de-sac. When you get five or six families moving into this particular home, you're looking at eight, nine additional automobiles. They park as many as they can in the driveway. They block the sidewalk. They fill up the parking on the streets, in fact, on both sides. So an EMS vehicle can't get through; it's one-way traffic.
  - There are two occasions where a commercial enterprise was making commercial television video tapes for Volkswagen. They rented the home. They started at

7:00 in the morning, erected tents in the street, blocked mailboxes, had all kinds of trucks.

- This is totally outside the bounds of what is acceptable to us as far as what we think Airbnb should be doing. Like Paul, we don't have any interest in prohibiting somebody from renting out a room or two, but when you take an entire home that's not their primary residence, and they constantly turn it over—oh, by the way, this has been completely rented every week of the year except when the people move out, the owners of the property come back, clean it up, and then somebody else is coming right back in the very next day moving in. I think we've seen as long as two weeks at one time. The typical rental runs either over the weekend for three to four days or five days during the week.
- Across the board, our 112 neighbors, with the exception of the one that owns the home, are very upset about what's happened to the fabric of our community. No longer can our kids play in the street. Some of the same issues that I described are the same concerns of some of the other homeowners and communities that are here from Northern Virginia and Tidewater. So from our perspective, it's not tolerable, and there has to be some limitations as to what's acceptable.
- We're also concerned about leveling the playing field between short-term rentals and hotels and things like that. If I was a hotel owner, I'd be very upset, especially since they have to pay all these taxes, and there are no taxes collected right now from these particular hosts. That has an impact on our infrastructure because those local taxes go to help repair our roads. If you're in Fairfax County, every time I want to get a pothole repaired, and I call up the department, they say they have no money. They can't put a sidewalk in. While that's not directly related, it does have an impact.
- We're concerned because of the casino across the street that profiteering landlords will move in. Right now we have four homes for sale in our small community. The people that live next to those homes are worried about the same thing that happened next to where I live and across the street from some of our other neighbors that are here representing our community. That is a big concern for everybody, especially if somebody finds out how great of a business model this is collecting \$450 a day for nearly 90 percent of the year. That's a pretty good bit of change to put in your pocket, especially when you take away 97 percent of it or whatever the percentage is that we heard from this morning from the Airbnb folks.
- From our perspective, there should be some specific changes. First of all, it should be a primary residence if you're going to lease this out. By the way, the property owners own another home within 10 miles of the one that they're using for Airbnb. When they're not there cleaning it up, they move back to the other home. It should be a primary residence. We'd love to see the primary homeowner in there while other people are leasing it. That may not be possible, but that is our preference.

- We want to ensure that LLCs or other partnerships organizations cannot have the authority to go in and purchase these homes and lease them out like hotels. We want to avoid any provisions that prohibit HOAs or condominium associations from issuing covenant. I have a condo in Norfolk and we have a big old covenant book like that. You cannot lease your condo to anybody for less than a year. The other thing is they have a limit on the number of rentals. So when you get to a certain percentage where it's 50 percent. If you're the 51st person, you're out of luck until somebody else moves. I'm not saying that that's applicable for a residential community, but I have to deal with that, and I have no control.
  - We brought in Fairfax County zoning people, coding compliance, to this particular house. They met with the homeowner. The result that came out of that is they are waiting to see what happens with the state. Even if you look at Fairfax County ordinances, a limit of two families in a home, we can't even enforce that because the county is waiting to see what happens to the state.
  - There should be a minimum safety requirement. A lot of the concerns that we heard at our pre-meeting we had today is what happens if the house burns down and my house burns down because of their house. My insurance covers that, but I'm still out of luck. What happens if my insurance doesn't cover the rebuild cost in that? We're not certain what is in this home as far as monitors and carbon monoxide, security stuff like that. Those are all very important issues to us.
  - We would like to see Airbnb establish an application—anybody that writes code should be able to do this—to be able to collect the taxes and remit those to the state. I don't understand why they have so much resistance to that, but that should be done.
  - We'd also like to see short-term rental hosts or whatever you want to call them be licensed. That would be one way to track to see who's leasing these homes. If they were licensed and they had to register with the county or the state for a minimum fee, let's say \$50, then you can find out who's doing this from a commercial perspective, who's doing it from a tax-collection perspective. It would also provide some revenue source maybe to go reinforce some of the codes for that particular county, which is very, very important to us.
  - One of the issues we have today is if there's an issue or an emergency, we don't know who to contact other than Airbnb. The people who own the house next door to me, they haven't given us any information to contact them. There should be a requirement to provide some information to the people who are leasing their property but also to the people that are in the community so we can contact them or somebody in the event of an emergency. And right now we have no idea if something happened what to do other than call the police or the fire department.
  - With that, I'll be glad to answer any questions.
- **Peace:** Thank you very much. Delegate Bulova, you had some questions.

- **Bulova:** Yes. Thank you very much for taking the time to come down here to Richmond and testify. I live in a community that has a civic association. As I mentioned before, I want to make sure that regardless of whether you're in an HOA or a civic association that you're protected in all this.
  - I guess what I'm seeing here, unfortunately, is a real breakdown of the enforcement of rules at all levels. I know we're not here with respect to Fairfax County. I guess I'm disappointed that Fairfax County code enforcement would use this ongoing process as an excuse not to enforce rules if they're already on the books. If they're on the books, they should be enforced. I guess the point of my question is it appears to also violate a number of rules that Airbnb has established internally, at least from what I heard. And I was curious whether you had approached Airbnb, and what the experience was like, and whether they were cooperative or whether you've tried to go through that process yet.
    - **Rioux:** I did send an e-mail to customer support and never got a response. That's not untypical like a lot of online services where you try to get somebody to respond. I did try contacting Airbnb through their telephone number and their e-mail address, but I haven't received a response. That was about three weeks ago.
- **Bulova:** All of us, representatives, we like to solve problems, especially things like that. So since you're here, and we have the Airbnb people here, and we had mentioned earlier of a hotline number that you can call and if they get enough demerits or if it's something egregious enough, they just kick them off. Before you leave, I would like to make sure they have that conversation with you and really anybody else who might have a concern.
  - **Rioux:** Ms. Irvin walked out the door, so I don't know if she's still here.
- **Peace:** Bulova says I read his mind. We'll make sure that connection takes place. Hopefully that will work in your favor. Are there other questions? Mr. Dicks.
- **Dicks:** I just have one question. I listened intently about the lack of code enforcement in Fairfax County, and that has not been my experience representing private clients in Fairfax County for a number of years. Perhaps Paul could assist you with contacting Code Enforcement. There are occupancy restrictions, which clearly have been violated in this case. There are parking restrictions, which have clearly been violated. There are a number of situations where our multi-family clients in Fairfax County have been zinged a number of times on offenses much less offensive than what you've experienced. I think that's a good resource to check with Fairfax County. And I absolutely agree, there is no reason to not enforce the current zoning restrictions regardless of what happens with this legislation because zoning applies anyway.
  - **Rioux:** Those particular codes are what I call reactive; they're not proactive. They react to complaints.

- **Dicks:** That's correct.
  - **Rioux:** We complained and somebody did come out. In fact, we had a subsequent meeting on another issue with Code and Compliance, and I brought the subject up of Airbnb. I got the gentleman's name, sent him an e-mail. He called me back, and he said he was going to send me the report as a result of the visit to this particular listing. We never received a response. I followed through three more times. I'm on a first-name basis with Dan Stork, who is our Mount Vernon district supervisor. He keeps promising he's going to look into it. I'm still waiting for those responses. We're not giving up. I'm just saying right now that we're not getting the type of response in a quick fashion like we'd like to see happen.
- **Peace:** I appreciate that. I'll just say much like I just said about the company not responding, government, state, local, whatever level, should be responsive. We have representatives from VACO and VML and others who've taken great interest in this legislation. And we would encourage them to do a self-check and self-reflection and inventory of are they doing what they are already authorized to do and enforcing likewise. You make some very good points and we appreciate that.
- **Gordon:** That's kind of the question that I brought up before. If you have a home in Fairfax where it's over occupancy, it's there on a long-term basis. The question then that comes up with short-term rentals is that it fluctuates. If we have a zoning violation and it's over occupied, we go in and you can then verify they have 30 days to correct it. But if you have a short-term rental, you go in, it's corrected the next week. But then it's over occupied again. As we look at this legislation, that's what I think we need to discuss because it put localities in a hard spot because it doesn't fit the traditional zoning violation.
- **Peace:** Right. We are in a new world. If anybody's been following politics or anything else lately, we know the old models—that goes for how we structure government—may not apply to the world we live in. We have become more fractured as a republic in many ways, in every way. Trying to put old models onto new ideas is like trying to put a round peg in a square hole. There are disruptions taking place in every industry, whether it's government or politics, hotels, taxes, so that's why this is a great opportunity. What I said at the very beginning of this process, let Virginia be in the vanguard and show how government can react more appropriately to changing conditions. And we are always in a reactive position no matter what. I appreciate what you're saying and accept that as an invitation to carry on.
  - Any other comments for this fine gentleman? I know we have a number of other people who have been here and have been here for three hours. We've heard a lot about the mechanics, the taxes, property owners associations, and property manager concerns. We've had legislative input. Are there members of the public—Mr. Terry, hold on just one second—who have been here and been patient that would like to offer something that we have not heard? Yes sir. If



you'd come up and just state your name please. We're going to operate on our custom which is three minutes, if we can do that. Thank you.

- **Jack North:** Good afternoon. My name is Jack North. My wife and I own and operate Mayhurst Inn, a legal B&B, and it's also our home in Orange County, Virginia. We've been at it for 13 years. I'm also a member of the board of directors for the Professional Association of Innkeepers International, the largest B&B association in the country.
  - We wonder why Airbnb is trying to change something that's not broken. Virginia already has unique laws and rules and regulations that apply only to B&Bs. Legal B&Bs know better than anybody else that we are not the same as hotels. Because we're different, we have worked in harmony with other accommodation providers and with state and local governments to develop rules for building codes, occupancy requirements, and fire and safety regulations that apply only to B&Bs. We work with the Virginia Department of Health to create unique regulations just for B&Bs. We work with the Virginia ABC office to create specific rules for a B&B ABC license. Finally, we work with communities and our neighbors to develop equitable laws and regulations and to ensure that our businesses have a positive impact on our neighborhoods. And as members of those communities, we pay our fair share, because we share the products and services they provide.
  - Both B&B owners and Airbnb hosts provide accommodations for money. Many do so from their own private homes, like us. Both provide beds or rooms or old houses for rentals for a day or a week or just full time or part time. Both use the revenue to augment their income and pay the mortgage. Both are de facto and de jure businesses. I was really appreciative to hear the tax folks say that repeatedly.
  - And Virginia requires that businesses register. There is no difference between Mayhurst and my wife and I and an Airbnb facility and their host. Why should the rules be different? Airbnb wants to create new terms and new rules that apply only to their listings. Why, as nothing has changed. Airbnb wants to hide the identity of their listings and their owners from everyone. Why? Airbnb claims to be something unique because they're part of the sharing economy. So what? Nothing has changed. There is no difference between a B&B and an Airbnb host.
  - Sharing is about working with other accommodation providers, the state and communities to develop equitable laws, codes, and regulations and truly level the playing field. Sharing is not about just paying the taxes. Sharing is about obeying all the applicable laws and regulations and paying all the applicable taxes and fees that support our communities. It's not about picking and choosing the laws you want to follow or redefining terms to avoid them or encouraging hosts to break the law by not requiring compliance. Airbnb does not require compliance to list.

- Sharing is about working within each neighborhood fabric. Sharing is not about violating that fabric and that environment by bypassing the input and the rights of people who live there.
- If the committee really wants to come up with groundbreaking legislation for this segment of the accommodation market, they should follow the recommendation that Senator Norment made in a letter to Delegate Peace in May and put real B&B owners and real Airbnb hosts on this committee. We know this business; we'll come up with good solutions.
- Airbnb and its hosts need to stop trying to change everything and undermine local governments and communities. Airbnb hosts need to get on board and start running their businesses in Virginia. It's really fun, and it's real easy. It's a piece of cake to pay the taxes.
- We the people of Virginia, and not Airbnb, need to accept the example of how to do this for the entire country. Thank you.
- **Peace:** Thank you.
- **Josie Balatto:** Thank you, sir. My name is Josie Balatto. I am not anti-business. I am pro-family. In May, Delegate Peace posted that this workgroup had started to debunk myths. I do welcome the opportunity to take part in that effort. I must admit, though, that it is incredible pressure to make five hours of travel worth the three minutes I'm allotted today.
  - You are addressing issues that affect eight million or so residents. Many of our citizens object to the idea that residential motels can appear without warning or notice next to where they live. But those of us directly impacted lack a dedicated voice on your panel. Because of this, I find myself wondering who will speak for us in your final report.
  - The daily rental debate seems to revolve around everyone and everything except what is happening to us, the residents next door. There is a lot we don't know about daily rentals. We don't know if a house has been booked through Airbnb, FlipKey, HomeAway, Craigslist, or any of the 20 or so online companies. We don't know how many people will arrive, how long they will stay, who they are, or why they have come. We don't know who is monitoring how many people are on the premises. We've witnessed teams of people dragging sleeping bags into houses advertised with 10 beds.
  - What we do know is that some property owners rent out multiple areas inside their house like a boarding house. We also know many property owners depart the premises long before the strangers arrive, and they never lay eyes on these folks. They leave it to the neighbors to experience the thrill of the cultural exchange that Airbnb promotes.

- We know many groups are local visiting these houses. They book large houses for birthdays, weddings, and business gatherings. They bring groceries and casseroles from home. These people are not tourists and they are not pumping extra money into our economy. We know that more groups book houses than are found in the posted reviews. What we don't know is why.
- Finally, we know that there are apps now offering bookings by the hour of bedrooms, pools, hot tubs, decks—you name it. Think about it. One group might be renting just the hot tub, while another is using a bedroom, and a third is grilling on the deck, and all are paying separately for their experience. How special is that?
- Airbnb touts its data transparency. So I ask, where are the listing figures for the other platforms operating in Virginia? When they state neighbor complaints are rare, and you've heard today that it's only been up for a month, where are those sources being drawn from listing the fact that there are only rare complaints? Is this a statement about Virginia or Timbuktu?
- Before you upend all local zoning, shouldn't all sides have access to this Virginia data? But don't expect it to be readily offered. When New York State sought the data, there were reports that Airbnb would release it to the lawmakers only after they made appointments to read a physical copy of the information at a location chosen by Airbnb. From our experience, it appears they get to choose while we all lose.
- Why would Virginia get into bed with these partners? Please don't forget us, the eight million. Thank you.
- **Peace:** Thank you.
- **Jenny Boscela:** My name is Jenny Boscela. I am a beekeeper, and I am also a small business owner in Fairfax County.
  - What is a neighborhood? It's comprised of roots and some are deep—this is years of living in a neighborhood, decades of living in a neighborhood—and some are shallow. We have long-term renters who live in our community.
  - I have lived in and been part of the social fabric of Northern Virginia for the past 30 years, 28 of which have been in Fairfax County. I can attest to the many changes to the area and our suburban landscape in that time. I and my husband have owned three homes in the county over that period, and I have been and continue to be a community activist there. Buying a house and investing in a neighborhood is the most major purchase and investment in most people's lives, and it is not a decision made lightly.
  - I'll give you a brief zoning history of Fairfax County. In the early and mid-2000s, zoning issues came to the forefront in the county and around the country as transient people looking for work moved or congregated closer to hubs where

they could find day work. Transient day workers and other low-paying job seekers sought cheap living arrangements close to these areas, and dormitory-style arrangements within single-family homes multiplied throughout and close to Northern Virginia suburbs.

- One such house opened next door to our home, a rental to at least eight men, including a garage service for automobiles. The Fairfax County Department of Planning and Zoning had formed a task force with county police and the Health Department to combat overcrowding, fire and safety hazards, multiple kitchens, and commercial businesses being conducted out of residential areas.
- In the same neighborhood and time frame, a commercial business petitioned the Zoning Board of Appeals to move a business from the commercially zoned area in Annandale to a home in our neighborhood zoned R-2.
- If you've ever been to Annandale or the cities of Falls Church or Vienna, you can see 60-year-old houses on main roads that were once residential and have turned into commercial districts. I led the charge to prevent Commercial Creek from the commercial business district five blocks away from encroaching on our R-2 neighborhood.
- After 2007, another surge in multi-family overcrowding and other zoning concerns hit our area hard. I and my neighbors in the Walters Woods, Malbrook, and Sleepy Hollow Estates neighbors—that's 30 neighbors and counting; I've only known about this for about the last 10 days—believe that commercial and quasi-commercial transient use of single-family homes needs to remain separate from residential use. We bought our homes on the strength of our community, invested life savings, raised families here to maintain the strength, and strengthened the integrity of the fabric of our neighborhoods and surrounding communities, and maintained property.
- The sharing economy does not fit in this scenario. Any change to our zoning ordinances and enforcement from a county-centered operation to something more nebulous and a seemingly unenforceable approach would turn the clock back 25 years to the days of wild west zoning issues, including illegal boarding houses, under-the-radar commercial enterprises conducted out of residential areas, both of which I have personally organized community support to fight in Fairfax County over the past 20 years.
- The county continuously monitors the pulse and is quick to respond to our rapidly changing area and our unique and specific needs as a major metropolitan area within a few miles of the nation's capital. Fairfax County and each individual county in Virginia needs to stay connected and responsive to their respective citizens within the Commonwealth and keep separate commercial from residential use. They need to keep the regulation and enforcement piece under county purview. Any sort of short-term illegal transient lodging needs to be regulated like any other commercial enterprise and not sacrifice the blood,

sweat, and dreams of homeowners which will forever change the character of our neighborhoods.

- See Airbnb and the like for what they are: commercial businesses operating illegally at residential homes. License, tax, and regulate them accordingly. Thank you.
- **Peace:** Thank you.
- **Beth Erickson:** Good afternoon. My name is Beth Erickson, and I just want to say thank you very much—
- **Peace:** Excuse one second; I'm sorry. Staff reminded me if there are written comments that you have that you've read off of or prepared, we would want to receive a copy of those so that we have that on our record, if you will. Again, I know you were going to say who you are. I appreciate that. Thank you very much.
- **Erickson:** That's all right; I'll start again. My name is Beth Erickson. I thank you so much for having me down this afternoon and allowing the voice of a Convention and Visitors Bureau, a destination marketing organization, at the table. I'm going to talk to you today about data, and I want to talk to you about how I use data, why we use data, and how we use data to drive decisions.
  - On the briefing document that I have before you, a standard briefing document, there are two things I want to touch base with you on the front page. And then in the interest of time, I'm going to ask you to turn it over. So we're going to create a little breeze.
  - On the first page, Mr. Haskins has touched a little bit on this when he talked about the state codes and state taxes being collected. This is where we start talking about the community-driven, the county-driven taxes that are collected, and how they're collected, and how they're used.
  - There's a small primer here because we are one of the counties that has that additional above 2 percent. We have 5 percent TOT that we collect. I'm going to talk about how we use it. The second is talking about VDOT. And I was so glad to hear Mr. Haskins touch base on that. VDOT in addition to the 0.7 percent additional tax, there's also an additional 2 percent TOT, transient occupancy tax, that goes directly to the municipalities for road work, bridge constructions, things that really improve the quality of life. I don't want those to be lost in the din of the discussion.
  - This is the point where I'm going to ask you to turn over. And as we do, I'm going to tell you what we do with that TOT. What we do with that TOT is we generate more revenue for the Commonwealth of Virginia. In 2014 alone, state tax receipts in Loudoun County were about \$40.9 million, and that was up 10.4 percent over the previous year. We're seeing it grow. Tourism generates about

1.6 billion in Loudoun County alone and supports 16,000 jobs. We're not talking about anything other than job growth and revenue production in my presentation.

- So on the top of the second page you're going to see a matrix. That is a very brief moment into my brain every day when we sit down and take a look at what we're projecting and how we're using the data. I know that I have 37 hotels, resorts, and conference centers in Loudoun County. Our inventory is about 5,700. I know our average daily rate. I know our occupancy. You're going to see there's an asterisk there. How do I know that? It is reported on a weekly basis to Smith Travel Research. Everybody supports it. Everybody puts the information in. From that, I'm able to work with our county's jurisdiction to predict what that 2 percent VDOT TOT would look like. What will our county be able to count on for TOT production out of that 5 percent? Straight across the board—it is black and white.
- I'm going to bring you down to the next one, which is the Airbnb. You're going to see very quickly across the board what we've got going on in Loudoun County. I spent a lot of time on the website. So I know what we have in terms of entire homes that are being rented. I can tell you what private rooms are being rented. I can even tell you, in my opinion, the really scary thing of shared rooms. That's okay; there are only 12. But I'm going to go ahead and walk you through left to right.
- You're going to notice that when we start talking about the fact that there are 919 Airbnb listings that are on Airbnb's website for Loudoun County, which I use Edward's data, specifically when we look at average time of stay, that starts getting us up to some significant room nights in Loudoun County. Sixteen percent of our available hotel rooms are Airbnb listings. They are not taxed. They are not held to the same accountabilities. Ladies and gentlemen, that is a staggering number to me, and it's growing.
- In that block, you're going to see a lot of gray information. The gray information is gray because I don't have that data. I cannot help my county project. I cannot help the Commonwealth budget because I do not have that data. I don't know what the occupancy is. I don't know what the length of stay is. And in all honesty, that's critical information so that I can start looking across the board on what we should be projecting. That is what I'm here today to talk to you about. As we continue in these discussions, I am happy to continue the dialogue. That is critically important to us. Data is the new oil. Data is what we need. We need transparency. There are those behind me that are going to speak more passionately—I'm passionate about data. But they may be talking about the other aspects. Those are all critically important and warrant your listening.
- So thank you so much for your time. My contact information is at the bottom, so please feel free to reach out to me at any time. And Pia, if I may, next time you're in Leesburg, call me. Let's have a cup of coffee.

- **Peace:** Thank you for being here. I think Loudoun is very lucky to have you, and we want to make sure Loudoun can get those revenues that it's not getting right now. And as someone whose family founded Purcellville, I love Loudoun County, and I appreciate what you do.
  - **Erickson:** Thank you so much. I appreciate your time.
- **Bob Mathias:** Mr. Chair, members of the committee, I'm Bob Mathias from the City of Virginia Beach. I want to talk about three things today: equity, revenue, and health, safety, and welfare. I've sent around a resolution adopted by city council back in January where they address these issues and opposition to Airbnb. I think we all know there are multiple other platforms out here, but we've been talking Airbnb today.
  - For health, safety, and welfare, enjoyable quiet of your property. Delegate Knight alluded to this. Back in April, we had 100 people at a house that was rented through Airbnb, and a gentleman did not survive the evening. We had a hard time, almost an impossible time getting hold of the owner.
  - We had a public hearing related to this issue, and we had a number of individuals come in and say they bought a house in Virginia Beach, put their equity into it, put their sweat, love, and tears into it, and folks rented a place next door to them, and their entire life has gone to absolute heck. They said the people would come in for three days and all they do is drink and raise heck. If they come in for a little longer, they're less troublesome. But nevertheless, that's really causing an issue for people's biggest possession.
  - We're a strong property rights state. You think you should have a right to rent out property if you want to. But I think your ability to rent your property shouldn't overwhelm everybody that's around you. And you've heard a bunch of horror stories about people parking in yards and things like that. We have the same thing.
  - Virginia Beach has an 8 percent transient occupancy tax. We have a 6 percent state sales tax because we have the seven-tenths added for the region. So seven-tenths of the state sales tax goes to the Hampton Roads Transportation Accountability Commission to help build the roads and bridges we need in Hampton Roads to help tourists get in and out. It's two of the biggest engines for the Commonwealth. Half of a percent of the state sales tax goes directly to VDOT. I don't think you all should be forgetting that, and I'm sure you're not. And then of the 8 percent transient occupancy tax we have, a little over 5 percent of it goes to what we call our Tourism Investment Program. That's paying for things like the debt service on improvements we're making at the oceanfront for a private developer to put in a \$240 million arena. No state funds are involved; they are all local funds and the investors' funds. If we are starting to lose money because of revenue that's rightfully due us, I think that our bond rating could be affected in the future. That's something you all need to consider.

- We think they're at 800, and probably much more than that, Airbnb rentals in Virginia Beach. We only have 8,000 hotel rooms at the oceanfront. So we have folks that are coming in and staying without paying taxes, without being regulated equivalent to 10 percent of the hotel rooms we have at the oceanfront. So where is the equity for those hotel owners, whether they're homegrown or large corporations who have invested in Virginia Beach in expectation that their business model is going to survive and be workable? It's not going to be workable anymore with the issue with Airbnb.
- Thank you very much.
- **Peace:** Thank you.
- **Jim Moffat:** Mr. Chairman, committee, thank you. I'm Jim Moffat. I manage Sandbridge Realty, and I wanted to give you a perspective on property management. We have 450 weekly vacation rentals.
  - As a weekly vacation rental company, we take full responsibility for our actions. Our sheets and towels are sanitized and wrapped. Our cleaners go through intense training processes in a classroom setting and also in the field. Important use of chemicals and understanding material handling data sheets are an important part of our business, as are safety issues like dealing with bloodborne pathogens.
  - We have services like monthly pest control. I even have three certified bedbug dogs to review the properties on a monthly basis to protect our owners and guests.
  - The guests have a way to talk to us personally and directly to us. Any issues are handled quickly with cleaning or maintenance or any issue during their stay. Airbnb takes no accountability to that. All the responsibility falls on the owner who has no training or understanding of the short-term rentals. There are no codes of standards. Airbnb rents start at age 18. This opens up a host of problems. There are no controls for safety for the guests. Everything is reactive.
  - I want to take a minute to talk on the safety of residents and what happens in the time of an emergency. Some of this has been discussed already. We are there to let the police in and handle the situation. The local police actually have my personal cell phone number, so they're able to call us with any issues. And we're right there to handle it. Again, we're taking responsibilities for the house we are managing, not the case sometimes with Airbnb.
  - After 25 years in the business, we realize that to eliminate a lot of the issues with major parties, we only rent to over 25 years of age and a minimum of a three-nights stay in the Sandbridge area. Residents can call our offices on issues 24/7 with an answering service we contract to take care of those issues. We screen our guests coming through Facebook, Myspace, Snapchat, looking for unauthorized



parties. We don't want that type of person in our rentals either. There is no age limit or screening process in renting through Airbnb. They require two forms of ID.

- We have dealt with three-day weekly rentals for years. Sandbridge Beach is a beach destination. But Airbnb is going into residential areas that have not dealt with tourists and nightly stays and the disruption that goes along with it. There are no controls for the safety of the residents; there is only a recourse, which is calling the police.
- Close relationships are built over time. We're involved with the residents through the civic leagues. We have close relationships with the police. We have relationships with the local commissioner of revenue and the city council. We can get answers to our questions very quickly, and we can solve the problems as a team.
- Another part is Airbnb has a million dollar host guarantee, but this is used after something happens. These are not preventative measures. When the owner has over \$300 in damage, they have to file a police report to get reimbursed. That owner may not even live in town. This is not a protection. Now you're going to tie up police services for minor issues. Our company alone paid out \$56,000 last year on just minor incidences or minor breakage, and we don't have to call the police for any of that to make sure I have a report to file.
- Lastly, the revenue stream is paid by the homeowner, whereas with the property management company the taxes are paid through our company for the owner. Airbnb is disruptive e-commerce, not a wave of innovation. This is something that can really upset our business model and many others. Thank you so much.
- **Peace:** Thank you. May I ask you just a brief question? There is a little angst directed at Airbnb or whoever is doing the hosting platform. Do you personally go and speak with the owner of the property? They're the ones that volunteer their property that they bought in your neighborhood to be on the platform. I feel like sometimes we are a more connected society, but that may be in name only or through social media. We don't even know our neighbors many times. Are we making personal connections over the concerns that you speak to? I think that's probably just a global question for everybody.
  - **Moffat:** No, it is with the owners. I'm speaking for the owners that I manage for.
- **Peace:** Right. Okay, thank you. I appreciate it.
  - **Moffat:** Thank you very much.
- **Kate Welsh:** Good afternoon. I really appreciate everyone staying to give us all a chance to voice our thoughts.

- **Peace:** And this is not the last meeting we're having, just so everybody knows.
- **Welsh:** I'm here with my neighbor, and we promise together to take up about six minutes, so that should work.
  - My name is Kate Welsh. I'm a resident of Fairfax County. I'm here today because I really want to focus the conversation on the other people that are impacted by these rentals, and those are the surrounding neighbors.
  - We have an Airbnb rental on our cul-de-sac. It is a situation where the property owners completely vacate the property and run it like a hotel. There are new people in every couple of days. It is completely unbearable. I want you to hear what we have to say because we have property rights as well, and we very much want those to be taken into account as you move forward with this legislation.
  - I want you know specifically what we are sharing as a result of the sharing economy. Because of the hotel on our street, we're forced to deal with a regular influx of strangers in our neighborhood by the day, the week, or the weekend. We never know when people are coming, how many, or for how long. These strangers have no ties to our community. And even though as I heard earlier, maybe the person doing the booking is getting a background check, but what about all the other people that come into the house? That gives us zero comfort as neighbors.
  - As I said, the owners leave the property, so they don't actually meet these strangers. And most importantly, they don't know how many guests the strangers allow in or what's happening on the property while they're not there. A short-term rental that allows an owner to leave and hold no responsibility for the property puts our kids, our senior citizens, and our entire neighborhood at risk.
  - Everyone keeps talking about the actors; I'm talking about the rentals themselves. It's not a one-off. This is the nature of these rentals. They are hotels in residential neighborhoods, and it is misery. I'm speaking for myself, for my neighbor who is here, for our other neighbors who couldn't be here today, a growing number of families in our community who are becoming aware of this practice in our neighborhood, and really a growing number of very concerned residents throughout the Commonwealth.
  - When people choose to become short-term rental hosts, we as families in residential communities lose. Short-term rental hosts choose to open their property up to strangers. They choose to vacate their homes while an unknown number of individuals have total freedom at that property. They choose to leave their neighbors and the community with all the oversight and enforcement issues of activities that they don't monitor. How is a 24/7 hotline going to help me? Does that mean the rental is going to stop? Does that mean someone's going to come and intervene? Really? That gives me zero comfort.

- Hosts choose to ignore neighborhood concerns or objections. We have talked to our neighbors who own the property. They are *not* interested in hearing what we have to say. They are making too much money running a business out of our residential community.
- Short-term rental hosts make these choices and neighborhood families lose. We lose our quality of life, our sense of security, the things that go to the very heart of living in a residential neighborhood. Short-term rentals do not promote the lives of families in residential neighborhoods; they take away from our lives.
- With that, I'll hand it over to my neighbor. Thank you.
- **Female:** I'm a full-time, self-employed working mother of two, and I came down here today to try to protect not only my family and my neighborhood, but families across the state of Virginia.
  - We bought our home on a cul-de-sac in Falls Church to raise our family in a stable, secure residential neighborhood. And as Kate mentioned, we now live next door to a daily rental property. Our neighborhood is no longer residential, no longer stable, and no longer secure.
  - We didn't buy our home to live next door to a hotel, but if it was a hotel, at least the occupants would have to provide identification and would not be allowed to bring in as many additional guests as they please. A manager would be on site to monitor activities. What we live with is strangers renting the house next door online for a minimum stay of two nights. Their property is advertised for rent every weekend, every holiday for the entire summer. Strangers aren't screened or monitored, and they're given the access code to enter that house. They are never met by the owners. These strangers who have no ties and no accountability to our neighborhood are provided an access code to our cul-de-sac and to our children.
  - I ask you for a moment to walk in my shoes. There have been nights where my children didn't sleep because of the noise from parties hosted by transient occupants. Lewd behavior from their bedroom windows has been visible. This week we're lucky, at least there are kids next door. But every day you don't know who, when, how, or what will be next door to your children.
  - Does the loss of the stability of neighborhoods matter? Does the financial gain of a few outweigh the rights of families, the protection of children? As noted in an article in the official magazine of the National Association of Realtors, a single family home or condo unit next door to a short-term rental where occupants change every few days will take longer to sell and bring in lower offers. Does the loss of the value of family homes, our investment, and our children's education for college, our retirement, does that matter?
  - I'm here to plead with you to ensure that local governments and local authorities are truly, and I mean truly, able to regulate, truly able to enforce daily rentals of

transient occupants. If not, Virginia parents lose the ability and the right to own a home in a stable residential neighborhood. Children lose the right to play and grow up with the security of a stable residential neighborhood. We all lose the American tradition, the Virginia tradition of honoring and valuing family neighbors.

- Thank you for your time.
- **Peace:** Thank you.
- **Todd Divers:** Mr. Chairman, members of the working group, I'm Todd Divers, the Commissioner of Revenue from Charlottesville. We've been wrestling with this for quite some time. I just wanted to make a few points while I had the opportunity.
  - There was not much discussion of BPOL today, which is obviously pretty important to the commissioners of revenue. I assert that it is the responsibility of the commissioners of the revenue to determine what constitutes a business within their jurisdictions. I'd like to make a couple points along those lines.
  - First, the prohibition contained in § 58.1-3703 against the locality's ability to impose a local license fee or tax on the business of renting real property should not apply to limited residential lodging activities to the extent that such activity is substantially similar to the categories of use exempted from the prohibition, namely hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses, and boarding houses.
  - Number two, advertising one's services on an internationally available travel website meets the threshold for creating a rebuttable presumption that a person is engaged in a business, as set out in § 58.1-3700.1.
  - Access to information indicating the actual frequency of an activity is quite helpful to commissioners of revenue in making a determination as to whether a business license is required. Such information should be available to commissioners upon request from online platforms. In the absence of such information either from the platform or the host, as contemplated on Senate Bill 416, commissioners must make use of the information to which they have access. Shielding owner identity, location, and frequency from commissioners not only helps create the potentially mistaken assumption of a continuous and regular course of business, but it also flies in the face of our responsibility to collect accurate tax information from business owners. In other words, it is not a given that every listing on Airbnb will be subject to a business license. As in all other areas of business taxation, access to accurate information allows commissioners to make appropriate determinations.
  - Business License is a gross receipts tax. I can't speak for all commissioners, but I personally oppose the imposition of an arbitrary threshold of activity in terms of

time—days, weeks, months, etc.—to qualify for a business license. What is to prevent such an arbitrary standard from being applied to other sorts of home occupations and to other businesses in general?

- If a bright line is desirable, a gross receipts threshold is preferable. Such a threshold currently exists for the very specific category of home occupation, namely direct sellers. That seems to be a reasonable starting point of discussion, if we're looking for a bright line. Commissioners will still need access to host data in order to make an appropriate determination.
  - This is another point I want to make. Despite being valued at \$30 billion most recently, which is up from 25 and a half billion about a year ago, making it the highest valued hotel operator in the world, it has been argued that it is not feasible for Airbnb to remit trust taxes on behalf of its host clients directly to Virginia localities. I submit that all of the other major hotel chains manage to report and remit trust taxes directly to the localities for the millions of transactions taking place in thousands of properties across the Commonwealth. To suggest that Airbnb cannot manage to do likewise strains credulity.
  - And then finally, it is not appropriate for a local option tax to be administered by the locality in only some instances and by the state in others. Senate Bill 416 proposed making one class of taxpayer subject to state oversight and audit procedures, while all others remain subject to local oversight and audit procedures for the same tax. This is inherently unfair. Thank you.
- **Peace:** Thank you for your public service as well, Mr. Commissioner. Yes, you'll be the last speaker.
  - **Male:** Mr. Chair and members of the working group and the Housing Commission, you've taken on a very challenging task, and I appreciate very much the work you're doing, and I applaud your search for solutions.
  - **Peace:** Thank you.
  - **Male:** I live in Fairfax County, and I was HOA board president for 12 years. This has increased my awareness of these kinds of issues. Through that, I have been in contact with HOA and civic association leaders all across Fairfax County. The alarm bells you have just heard from some members of the working group and from speakers before me as ringing loudly all across Fairfax County and across Virginia. We are very concerned.
- Pia Trigiani mentioned that a large portion of HOAs do not have the covenants that protect them. That is of great concern to us, so I hope that one result of the working group would be that HOAs that do not have the appropriate covenants but they do pass rules, that you'll find a way to protect those rules from the new leasing restrictions to find a way to not allow leasing restrictions to be abrogated in any way.

- I have stayed in Airbnb and I had a very good experience. Every time I have stayed in a person's home, that person was present in the house. That is exactly how it should work. I applaud that kind of business model. What we need to do is dramatically reign in the leasing of unoccupied apartments and houses. That is very detrimental to neighborhoods, as we've heard about. It is also drying up important parts of our housing stock. Please find a way to make that happen.
- Thank you.
- **Peace:** Thank you very much. Thank you to the members of the workgroup, the public, and others who have taken an interest today. We're going to have our next meeting of the workgroup on August 18th at the same time and same place. The issues identified today, including continuing inspection of the public safety matter, and certainly Mr. Bradshaw and others who he might want to bring are invited to talk about insurance. And Senator Stanley asked specifically about that. We need to make sure we cover those issues. And the local government, just general concerns I think we put on that agenda as well.
  - I think you can see that when we have one or two substantive issues on an agenda, it does occupy quite a bit of time. So we want to be mindful of your time.
  - If those three are acceptable, that will be the basis of our tentative agenda. Agendas are subject to change, of course. And please feel free to contact staff on those matters. So before we adjourn, Delegate Knight, did you want to have any closing remarks on the way out?
- **Knight:** Yes sir, I have four or five items that I saw, but I'll give those to Elizabeth.
- **Peace:** We'll commit to work with you and staff to develop that agenda.
- **Knight:** I had a little something on my mind. Senator Stanley, he wanted to make sure that I mentioned this if I would. We've had many, many meetings in Virginia Beach with constituents because we have a tremendous tourist industry down there. We have so many people that view tourism and all aspects of it as something we have to put together. But I've met with so many folks down there, and I had four to probably eight folks that I've been talking to, that I've had meetings with that had taken off of work to come today because they saw that we were going to have public comment on the agenda. Then somehow or another the agenda got taken down and there was no provision for public comment. They were calling me last night. I didn't find out about it until yesterday afternoon. I said I don't know what's going on. If there's not a public comment, they said they didn't want to come for this.
  - I would just like to say—and Senator Stanley asked me to say this too—that we are going to have a public comment at the next meeting, and that it will be on the agenda plenty in advance, and the agenda will stay up the way that it was

proposed. The people that I work for who are the residents of Virginia Beach are awful upset because they took days off of work and everything.

- Senator DeSteph, he and I represent overlapping areas. With the Chairman's permission, I didn't know if he had any remarks that he needed to make on that also.
- **Senator Bill DeSteph:** Actually, I think I represent probably the largest on both sides in the entire state that's impacted by this with not just 220,000 residents, but about 1.6 billion tourists a year. I'm sitting here writing down my questions and everything. Mr. Chairman, you and I will have a discussion afterward.
- **Peace:** Absolutely. That's a standing invitation. Thank you all very much. Make sure you book about five hours for the next meeting. And I apologize. I said August 18th. August 25th would be the next week on a Thursday at the same time.
- **Female:** Mr. Chairman, I have a quick question. A bed and breakfast from Yorktown were here earlier, but had guests checking in at five, so they had to go back. I do want to just make sure that that does make it into the record that they were here and wanted to speak about the licensing and the mortgages that small lodging properties have to go through, because I think that's something that we haven't heard from. But then also I have an entire stack that I'll pass around to all of my working group members of different scenarios of how small lodging is operating in Virginia just to kind of give you guys an idea of a day in the life of a small lodging property and what they have to go through to operate.
- **Peace:** Sure, that's very good. I appreciate that. I know you've been designated to represent the B&B industry, and we appreciate your input. Thank you.

## VIII. Adjournment

- Upon hearing no further requests for comment, Delegate Peace adjourned the meeting.